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**International Human Rights, Law
and Abused Women in Contemporary China**

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In fulfillment of the requirements for the award of
the Degree of Doctor of Philosophy



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Declaration

The material contained in this thesis is the work solely of the author and where materials from other sources are used they are acknowledged. This work has not previously been submitted for a degree at this or any other university.

Abstract

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This is a social legal study of how violence against women has emerged from the private to the public domain of international human rights law and how the Chinese government has responded to this change. Drawing upon in-depth interviews and participant observation, it examines the manner with which Chinese women and Chinese society define domestic violence and how the state and relevant institutions address the problem in the policy and the support provided to abused women against the background of economic reform. This study also explores the concept of the rights of women perceived by women themselves and evaluates the work of social support mechanisms.

It intends to show that domestic violence should be understood within the framework of patriarchy and the development policy of the Chinese government. My research demonstrates that the problem has to be tackled at its structural level by removing the social, economic and cultural conditions associated with the phenomenon. In order to tackle the problem appropriately, attention should be concentrated on making detailed enforceable laws and guidelines for the relevant institutions as well as improving the implementation of the existing law.

The thesis concludes with the suggestion that international human rights law should be modified to reflect women's real life experience as well as adopt strategies and enforceable conventions to address the issue. At the national level, the Chinese government is duty bound to convert international human rights law to national laws, and more importantly implement them efficiently by improving the work of relevant organisations. Another important aspect of the implementation process is to foster attitude change in relevant institutions, and through them change the attitude of abused women to the violence they experience so as to protect their rights.

List of Abbreviations

CSW	Commission on the Status of Women
CPPCC	Chinese People's Political Consultative Conference
CEDAW	Convention on the Elimination of Discrimination Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
ECOSOC	The Economic and Social Council
FWCW	The Fourth World Conference on Women
GA	United Nations General Assembly
GOAR	General Assembly Official Records
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
NGO	Non-governmental Organization
NPC	National People's Congress
PRC	People's Republic of China
UNTS	United Nations Treaty Series
UDHR	Universal Declaration of Human Rights
UN	United Nations
WLSSC	The Women's Law Studies and Service Center

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Introduction

"All Happy families are more or less dissimilar;
all unhappy ones are more or less alike."¹

Domestic violence is a universal phenomenon and often a factor in the creation of unhappy families. It is a human rights abuse that occurs in all cultures and countries, across all divisions of wealth, race, education and social class.

However, the issue of domestic violence has only recently been incorporated into the international human rights discourse. This thesis is a socio-legal study of how violence against women has emerged from the private to the public domain of international human rights law and the response of the Chinese government and society to this change. It examines the manner in which Chinese women and Chinese society define domestic violence and how the state and relevant institutions address the problem in their policies and the support provided to abused women. This study also explores the concept of the rights of women as perceived by women themselves and evaluates the work of the social support mechanism.

Background

Throughout history, women have tried vigorously to fight against domestic violence. In Britain, campaigns against domestic violence took shape in the nineteenth and early twentieth centuries and became more active in early 1970s. Women's Aid Federations emerged as a result of these feminist movements.

¹Tolstoy, L. *Anna Karenina* (Leonard Kent & Nina Berberova eds., & Constance Garnett Trans, Modern Library 1965).

They have established a network of refuges and related services and provide adequate support for battered women. In the United States, consciousness-raising groups for women started to address the issue in the 1960s. In the early 1970s, the battered women's movement began to grow. Currently, there are over 1500 shelters for women victims in the U.S. and many other centres that address the problem of violence at home.²

Women all over the world take action to protect themselves against domestic violence. In Zimbabwe, a voluntary project that holds workshops to help battered women was established. In the Philippines, shelters and counselling services for women are available.³ Due to sustainable efforts of millions of people, today the issue of domestic violence is being addressed more than ever before. (reference)

At the international level, the United Nations Decade for Women led to research on the issue of violence against women in many countries in the 1980s. The Nairobi World Conference on Women held in 1985 highlighted domestic violence in the Forward-looking Strategies. In 1993, the Vienna Conference recognised violence against women and children as a human rights issue. The UN Platform for Action issued by the Fourth World Conference on Women in 1995 built upon this by including violence against women as one of its critical areas of concern. Domestic violence is no longer an issue hidden behind doors. It is firmly on the public agenda.

² Deltufo, A. (1995) *Domestic Violence for Beginners*, New York: Writers and Readers Limited, p. 125.

³ *Ibid.*, at p. 29.

Compared with many countries that have made great efforts to address the issue in the 1970s and the 1980s, China turned a blind eye to it until the mid 1990s, and the Chinese government ignored the existence of the problem. One possible explanation was that the government focused on economic reform, therefore issues that had no direct links with its prioritised programme were considered as distractions and were largely ignored. Another explanation is that the government was afraid of being attacked for neglect of human rights by making the issue public. In the 1980s and 1990s, the Chinese government was the target of western countries for its serious human rights violations.

It was not until 1994 that the government formally admitted the existence of violence against women. In February of that year, the Chinese government mentioned the issue for the first time in a report entitled National Report of PRC on Implementation of Raising Women's Status Nairobi Pioneering Strategy.⁴ In Chapter seven, which discusses the Elimination of Violence Against women, it was argued that "The nation fights against acts of trafficking women and children and prostitution. The government sets up organisations and consultation institutions to protect the rights and interests of women. The government conducts legal education campaigns."⁵ Later, the concept of domestic violence was mentioned in The Program for the Development of Chinese Women (1995-2000).⁶ Under item 11, Improving the Social Environment for the Development of Women, it was stated that, "The

⁴ Gao, M.L & Wang, X.J. (1998) *Violence in the Family--- Wife-Beating*, Zhengzhou: Zhong Yuan Peasants Publishing House, p. 3.

⁵ *Ibid*

⁶ *People's Daily*, Oct. 8, 1995.

Chinese government protects women's equal status with men in the family according to laws. Domestic violence is strictly forbidden." These two documents marked the official lifting of the veil on this topic.

Prevalence of Domestic Violence

The earliest data on domestic violence in China is a survey conducted in 1990 on the status of women in China by All China Women's Federation and The National Statistics Bureau. The survey covered 11 provinces and cities in China. The survey showed that nearly 30% of the respondents had experienced violence at the hands of their husbands. Of these, 0.9% were beaten frequently; 8.2% of women were often beaten; and 20.1% of women were beaten occasionally.⁷

The Beijing Marriage & Family Research Association investigated 2,400 people in 8 districts in Beijing in 1994. The result showed that 0.99% of women were beaten frequently; 4.39% of women were often beaten; 15.92% of women were beaten occasionally. In total, 21.3% of women surveyed experienced violence at home.⁸

Half of the cases of family disputes which were handled by the Sichuan Provincial Women's Federation in 1993 involved domestic violence. Statistics show that, on average, one woman was killed while two were injured by their husbands each day in the Hubei Province in 1995.⁹ Furthermore, in 1996 the

⁷ Gao & Wang, op. cit., n. 4, at p. 5.

⁸ *Ibid.*

⁹ *China Youth News*, Oct. 17, 1997.

Shanghai Chinese Academy of Social Sciences conducted a survey which showed that 19.9% of women were beaten by their husbands.¹⁰

Another survey conducted in Tian Jin City in 2001 showed that among 2002 respondents, 18.5% admitted to having been beaten by their husbands, and 45.8% of the 300 divorced women were abused by their ex-husbands. What is astonishing is that among the 503 newly married couples in the survey, 10.2% of women said they had the experience of being beaten by their husbands.¹¹

Reports of domestic violence of a serious nature also serve as a reminder of the prevalence of the problem. In Hunan province, one woman was thrown out of the window from the fifth floor and lost her life. In Sichuan province, one woman's nose and ear were bitten off. In Tianjin city, one woman's eyes were dug out. In Heilongjiang province, one woman's face was severely damaged by sulphuric acid.¹² In Henan Province, one woman's tongue was cut in two, and her two eyes were damaged with a pair of scissors.¹³ In Sichuan Province, both hands of a woman were cut off by her husband.¹⁴ In every province of China, there are serious cases being constantly reported.

Statistics and serious individual cases illustrate the fact that domestic violence does not simply involve wife beating, which many people take for granted; rather this issue represents a serious human rights infringement that

¹⁰ Tian, Y. "Is Psychological Abuse Domestic Violence?", *Bai Xing Xin Bao*, March 20, 2001.

¹¹ *People's Public Security*, March 10, 2001.

¹² Zou, Q.J. "Domestic Violence Brooks No Delay", *Wen Hui Bao*, April 16, 1999.

¹³ *Chinese Women's News*, June 9, 2001.

¹⁴ *Fa Zhi Wen Cui Bao*, May 14, 2001.

deserves the attention of the government, social groups and support services. However, efforts to curb the problem have only just started. Academic research into the subject is still at an initial stage. It remains the case that there is little research focusing on abused women. Many research topics have not yet been touched upon, such as why abused women choose to cope with the abusive relationship, how they cope with it, how their family backgrounds effect their decision-making power, how they evaluate the help of the police, and what help they actually need. This thesis attempts to answer some of these questions.

Aims of the Study

More specifically, the research in which this thesis is based has the following aims:

Firstly, domestic violence has been added into the international human rights discourse. Several UN conventions and declarations require states parties to take immediate and long-term measures to tackle the problem. The Fourth World Conference on Women listed violence as one of 12 main areas of concern. Violence against women is a prioritised issue that has appeared on the political agenda in many countries. Hence this research sets out to investigate questions relating to this issue. It touches upon issues of how violence against women has emerged from the private domain into the public domain in the international human rights discourse; and how far does this emerging discourse reflects women's life experience as well as effectiveness of the UN mechanism.

Secondly, China, like other States Parties of UN, tries to implement UN human rights conventions by incorporating the principles of relevant

conventions in its domestic laws. In my research I aim to trace how has this happened and what has been the impact on the government and on women in China.

Thirdly, China's adoption of human rights has been linked with its economic reform policy, hence my research attempts to study whether there is some link between a fast growing economy and violence against women.

Fourthly, since domestic violence is a new public issue in China, there are few studies in this area. There is a huge gap between China and European countries in the study of domestic violence and social support systems for abused women. Questions that will form the basis of my research include: How do abused women in China view domestic violence and how do they cope with it? What is the concept of rights among these women? How do governmental organisations as well as families and friends respond to women suffering domestic violence? What are their attitudes to domestic violence? How do these attitudes effect abused women and the implementation of relevant laws?

Definition of terms

Domestic violence is not a term of art. Different authors may define the concept differently. According to Carolyn Hoyle, domestic violence is "the physical, sexual and emotional abuse of women by male partners or ex-partners."¹⁵ Hague and Malos defined domestic violence as "violence between adults who are in an intimate or family relationship with each other, most often a sexual

¹⁵Hoyle, C. (1998) *Negotiating Domestic Violence*, Oxford: Oxford University Press, p. 28.

relationship between a woman and a man."¹⁶ Levison defines it as the physical assault of a woman by her husband that includes slapping, hitting, pushing, hitting with an object, burning, cutting, shooting, and so on.¹⁷

The Women's Aid Federation in the UK define domestic violence " as comprising a range of types of abuse. These include physical, sexual, mental, and emotional or psychological violence. Threats of violence are also included." ¹⁸

The United Nations Declaration on the Elimination of Violence against Women provides a basis for defining gender-based violence. According to article 1 of the Declaration, violence against women is to be understood as: "Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life." ¹⁹

Some Chinese scholars define domestic violence as "violence to women in the family, that is violent action to infringe women's personal rights including life and health rights, personality right to harm their human body and spirit to some extent between family members by means of force or coercion. Its essential conditions should be that actors must be family members, the violating objects are women family members, the violating contents are

¹⁶ Hague, J. & Malos, A. (1993) *Domestic Violence: Action for Change*, New Clarion Press, p. 3.

¹⁷ Levinson, D. (1989) *Family Violence in Cross-Cultural Perspective*, Newbury Park: SAGE Publications, p. 34.

¹⁸ Hague, op. cit., n. 16, at p. 5.

¹⁹ *Declaration on the Elimination of Violence Against Women*, General Assembly resolution 48/104 of 20 December 1993.

women's personal rights, the infringing act is brutal enough to damage women's human body and spirit. Domestic violence must have brutal means, abominable circumstances, serious consequences, continuous time and vindictive motive. Domestic violence includes criminal offences punished by criminal law, illegal activities which are punished by public security regulations and tort act regulated by civil law."²⁰

Chinese scholars have labelled acts of domestic violence as falling into two categories: in a broad sense and in a narrow sense. The former indicates that some family members infringe on personal rights of some other family member, physically, mentally and sexually by means of violence, menace and disparagement. This includes violence between couples, between parents and children, and violence between other family members. The latter limits the violence only between spouses. It indicates the act of man or wife, during the period of the continued existence of their marriage, infringing on personal rights of the adverse party physically, mentally and sexually by means of violence, menace or disparagement that results in a given consequential damage.

Compared with western scholars, the definition given to domestic violence by Chinese scholars is based on family and family relations instead of relationships in a broad sense. According to western scholars, the subject of domestic violence includes not only marriage relationships, but also

²⁰ Zheng, Z. F. "Against the Violence to Women in Family and the Authority of Husband" in Ma, Y. (1997) *Resolutely Prevent & Eliminate the Violence Against Women*, Beijing: The People's Court Publishing House, pp. 93-94.

cohabitation relationships, not only heterosexual relationships but also homosexual relationships, not only present relationships but also past sexual relationships.

For the purpose of the thesis, domestic violence will be given the restricted meaning that most authors have adopted; namely that domestic violence relates to the violent relationship between a woman and a man who are engaged in a sexual relationship in a family. In China, cohabiting was not a common practice among young people at the time of data collection. Men and women who cohabit are identified as husband and wife in a *de facto* marriage by law. As the majority of women in China are registered as married women, the study only focuses on married women who are, or were, or have been abused and maltreated by their husbands.

Although different authors may define the concept of domestic violence in different ways, it is agreed that domestic violence consists of three major parts, namely physical, sexual and psychological.

Physical Abuse

Physical abuse is the most obvious form of abuse which women encounter. It may start with a single slap or punch that is not taken seriously at first. The tendency is for it to become more frequent and more severe. It can go from a single slap and punch to a kick, to being pushed about, being pulled around by the hair, twisting of the arms, being thrown against walls, knocked to the floor, being strangled and drowned, being set fire to, being shot, being poisoned, and being electrocuted. With the escalation of the violence, injuries become more

severe, ranging from fractures and bruises, to having black eyes, having clumps of hair pulled out, to sustaining damage to eyesight, burns, miscarriages, internal injuries, stab wounds, and sometimes culminating in a fractured skull. Some of the abusive actions are so severe that they not only result in internal injuries, but also might cause permanent handicaps and disabilities. Physical abuse is a repetitive action. When it starts, it seldom stops.

Research conducted by Edward shows that women's typical experience of violence was of being punched, kicked, slapped and beaten with an object.²¹ His research agrees with the investigation made by the Islington Crime Survey, which found that 74.5% of victims of domestic violence had been grabbed or punched, 92% punched or slapped, 56.9% kicked and 19.7% assaulted with a weapon.²² These violent acts are not isolated. Victims often experience years of abuse. As Deborah Lockton has shown, the majority of cases studied in Leicestershire in the UK had lasted for years, the shortest period being two years and the longest period 36 years.²³

Sexual Abuse

Mullender has defined sexual abuse as imposing any kind of intimacy while the woman is still suffering from the violence (i.e. sexual behaviour to which she might consent at other times), and other acts to which the woman does not consent to or which she finds degrading or disgusting, such as being

²¹ Edwards, S. S. M. (1989) *Policing 'Domestic' Violence*, London: Sage Publications, p. 65.

²² Maclean, Jones & Young (1986) *Preliminary Report of the Islington Crime Survey*, London: Centre for Criminology, Middlesex Polytechnic, p. 21.

²³ Lockton, D. & Ward, R. (1997) *Domestic Violence*, Cavendish Publishing Limited, p. 9.

photographed in sexual positions against her wishes, or being forced to have sex with others, with or without her partner's presence.²⁴ Liz Kelly's definition of sexual abuse is of "any physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact."²⁵

Kevin Browne and Martin Herbert defined sexual abuse as "sexual contact without consent; any exploitative or coercive sexual contact including fondling, intercourse, oral or anal sodomy, attacks on the sexual parts of the body. Involuntary viewing of sexual imagery or activity and treating someone in a sexually derogatory manner."²⁶ In addition, there are many forms of sexual abuse, such as the ripping-off of clothes, forcing women to indulge in sexual activity, dressing up and acting out fantasies, buggery, insertion of objects, forced enactment of hard-core pornography and caning, in addition to the victims being held or tied down and subjected to physical and verbal abuse during intercourse.²⁷

Physical abuse and sexual abuse come hand in hand. Women who undergo physical abuse can rarely escape from the "cruel hand" of sexual abuse. Physical and sexual abuse may be combined in various ways, as injuries to the breasts and genital area. Frieze's research found that a third of the women

²⁴ Mullender, A. (1996) *Rethinking the Domestic Violence*, London: Routledge, p. 20.

²⁵ Kelly, L. (1988) *Surviving Sexual Violence*, Polity Press, p. 41.

²⁶ Browne, K. & Herbert, M. (1997) *Preventing Family Violence*, Chichester: John Wiley & Sons, p. 13.

²⁷ Lockton, op. cit., n. 23 at p. 14.

in her sample reported that they were beaten and raped by their abusive partners.²⁸ As sexual abuse is not the main concern of this study, these definitions serve as an explanation when sexual abuse is mentioned in the research.

Emotional Abuse

Mullender has defined emotional abuse as "all the words and actions designed to break the women's spirit and destroy her self-esteem."²⁹ Browne and Herbert's definition takes into account incidents of "regular criticism, humiliation, denigration, insults, putdowns, name calling and other attempts to undermine self-image and sense of worth."³⁰

It is very rare for women to experience physical violence without suffering emotional abuse and threats. Although it takes many forms, verbal threat is the most common. It includes repetitive criticism of the woman, persistent belittling, insulting and intimidation. She may be accused of being stupid, ugly and incompetent; She may be embarrassed in public; She may be degraded by being ignored her desires, her wishes and her needs. Threats of killing the woman, her children and her relatives are also a common strategy for the man to exert control and dominance over her. Emotional abuse can also be manifested through financial control and deprivation of freedom. The woman

²⁸ Frieze, D. "Investigating the Causes and Consequences of Marital Rape" (1983) 18 *Signs* 3, pp. 532-553.

²⁹ Mullender, op. cit., n. 24, at p. 24.

³⁰ Browne & Herbert, op. cit., n. 26, at p. 13.

may be denied money to buy food and other daily necessities for the family and children. She may be detained in a small room and everything she does timed and supervised.

The humiliation and degradation experienced by abused women becomes a painful and indelible image in their memories. The side effect of emotional abuse is devastating. Abused women often have symptoms of stress, such as lack of sleep, weight loss or gain, ulcers, nervousness, irritability...and thoughts of suicide.³¹ They exhibit signs of confusion, guilt, shame and insecurity. Victims often describe their experiences of emotional abuse as the most damaging elements in their whole life. Furthermore, mental stress and psychological pressure lead to physical illness of abused women. Mezey's research discovered that most abused women needed to be treated for symptoms of anxiety, insomnia, and depression, 63.6% had to take psychotropic drugs, and 45.5% attempt to commit suicide.³²

Severity of domestic violence

Brown and Herbert have divided the severity of domestic violence into four categories: less severe, moderately severe, very severe, and life threatening. They are defined as follows:³³

- Less severe: minor incidents of an infrequent nature with little or no long-term damage. Injuries confined in area and limited to superficial tissue,

³¹ Stanko, E. A. (1985) *Intimate Intrusions: Women's Experience of Male Violence*, Routledge & Kegan Paul, p. 57.

³² Lockton, op. cit., n. 23, at p. 20.

³³ Browne & Herbert, op. cit., n. 26, at pp. 10-11.

including cases of light scratch marks, small slight bruising, minute burns and small welts.

- Moderately severe: more frequent incidents and/ or of a more serious nature, but unlikely to be life threatening or have potentially severe long-term effects. Surface injuries of an extensive or more serious nature and small subcutaneous injuries, including cases of extensive bruising, large welts, lacerations, small haematomas and minor burns.
- Very severe: ongoing or very frequent maltreatment and/or less frequent incidents with potentially very severe physical or psychological harm. Long and deep tissue injuries and broken bones (including fractures, dislocations, subdural haematomas, serious burns and damage to internal organs)
- Life threatening: long-term and severe psychological and physical harm that results in life-threatening situations (including perpetrators failing to seek help in time or victims harming themselves). This includes deliberate or persistent injuries that have the potential of causing the victim's death or near death.

A Chinese scholar has divided domestic violence into two categories: serious violence and ordinary violence. Serious violence denotes criminal offences between family members that violate criminal law, such as murder, serious and ordinary harm, rape, maltreatment, etc. Ordinary violence signifies violence which contravenes public security regulations or other executive regulations that happen between family members, such as beating, binding,

confinement and so on.³⁴ However, this definition is general and lacks practical applicability.

In this study, the severity of domestic violence is divided into three categories, light injury, moderate injury and severe injury. Light injury refers to minor incidents of an infrequent nature with little or no obvious harm left on the body, such as a punch, light scratch marks, and bruising. Moderate injury refers to more frequent incidents of a more serious nature, and obvious harm left on the body after the incident, such as prolonged swelling, broken bones, and scarring. Severe injury is long-term and includes injuries that are life threatening and have after-effects, such as harm left on head, eyes, hands and other parts of the body. The reason for dividing the severity of domestic violence in this manner is to make it consistent with relevant legal terms, laws and punishments addressing these offences.

Organisation of the thesis

The thesis consists of 8 chapters, an introduction and a conclusion. The introductory chapter lays out the background and purpose of the current study.

Chapter 1 reviews the efforts made by the UN to address domestic violence as a human rights issue and the process through which the issue moved from the private to the public domain. Several important UN instruments related to the issue will be analysed in order to critically evaluate to what extent

³⁴ Wu, M.H. "On the Regulation and Prevention Ways of Domestic Violence" in Ma, Y. (1997) *Resolutely Prevent and Eliminate the Violence against Women*, Beijing: The People's Court Publishing House, pp. 111-112.

women's life experiences have been included in the legal drafting of the international human rights law and how well they are implemented.

Chapter 2 provides the political, economic and cultural background of the position of women in Chinese society at various points in history and how the phenomenon of domestic violence has evolved with different dynasties and governments.

Chapter 3 outlines the impact of three Chinese marriage laws on women in general and on abused women in particular. Chapter 4 analyses how the Fourth World Conference on Women (hereafter FWCW) brought domestic violence into the public domain in China and how the Chinese government implemented the Beijing Declaration and Platform for Action by drafting two programs for supporting Chinese women.

Chapter 5 explains research methods, choice of survey sites, process of data collection and data analysis, evaluation and limitation of the present study. It also provides an introduction to several key institutions relating to abused women in China.

Chapter 6 explores the violence that was experienced by the women in my study and details its various features. Profiles of the thirty women will be provided, which include their family background, education, socio-economic situation, and basic information about their husbands. This chapter attempts to link economic development in China to the increase of domestic violence experienced by women. It aims to critically review the inherent relationship

between women's deteriorating economic situation in comparison with their husbands and the occurrence and escalation of violence occurring in the family.

Chapter 7 demonstrates how abused women and people around them perceive domestic violence. It also explores the concept of rights of women in the eyes of women. It examines the link between women's attitude to domestic violence and their family background (violent or non-violent), the attitude of their natal family and in-law families, and the attitude of friends and neighbours to domestic violence.

Chapter 8 explores, through the experiences of women in my sample, the responses of social institutions to domestic violence. It also reports on a limited number of interviews conducted with representatives of these institutions. Finally, the Conclusion is a summary of the main discoveries in this research.

Chapter 1

Women's Rights as Human Rights

The aim of this chapter is twofold. Firstly, it seeks to review the strategies adopted by the United Nations (UN) in its efforts to eliminate discrimination against women. Secondly, it attempts to expose the manner with which domestic violence emerged from the private to the public domain of the human rights discourse. I shall be interrogating the extent to which women's experiences have been integrated into the legal drafting of the UN's international human rights laws, and assessing the effectiveness of their implementation.

Upon its formation in 1945, the UN's charter affirmed its "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".¹ Articles 13, 55, 56, and 76 further express a commitment on the part of the UN and of its Member States to promote universal respect for and observance of "human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."² Article 8 states that, "[t]he UN shall place no

¹ Gandhi, P.R. (1995) *International Human Rights Documents*, London: Blackstone Press Limited, p. 14.

² *Ibid.*, p. 15. UN charter. Article 13, 1b states "promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 55, C states that "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". Article 56 states that "All members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55." Article 76 C states that "to encourage respect for human rights and for fundamental freedoms for all without

restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."³ The Charter is the first international instrument to mention specifically the equal rights of women and men.⁴

The UN has developed two main approaches to promoting gender equality. The first approach is based on policy pronouncements. The Commission on the Status of Women (CSW) is in charge of this work.⁵ The second approach is based on treaty. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination Against Women, belongs to the second approach.⁶

The two approaches coincide in their goal of working towards gender equality. A treaty is a legal document that delineates the obligations of States Parties. It has the power of creating international law and changing national law, however its limitation lies in the fact that it is only effective over those

distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world;"

³ *Ibid.*, UN Charter, art. 8.

⁴ Bruce, M. K. "Work of the United Nations Relating to the Status of Women"(1971) 4 *Human Rights Journal* 365-412. Reanda, L. "Human Rights and Women's Rights: the United Nations Approach" (1981) 3 *Human Rights Quarterly* 11. Prado, G.A.D. "The United Nations and the Promotion and Protection of the Rights of Women: How Well Has the Organisation Fulfilled Its Responsibility?" (1995) Fall *William & Mary Journal of Women and the Law* 1.

⁵ The Economic and Social Council (ECOSOC) established CSW in 1946 as one of its functional commissions in accordance with article 68 of the UN Charter. It has two main functions. One is to prepare recommendations and reports to ECOSOC on promoting women's rights in political, economic, civil, social and educational fields. Another is to make recommendations to ECOSOC on urgent problems requiring immediate attention in the field of women's rights with the object of implementing the principle. ECOSOC resolutions 1/5 (1946), 2/11 (1946) and 48 (IV) (1947). Davidson, S. (1993) *Human Rights*, Buckingham: Open University Press, p. 72; Ali, S.S. (2000) *Gender and Human Rights in Islam and International Law*, The Hague/London/Boston: Kluwer Law International, p. 199.

⁶ Prado, op. cit., n. 4, at p. 1.

who have accepted it. This supervisory power is further limited by reservations submitted by States Parties. In addition to the above mentioned two limitations, this approach has further limitation when it comes to monitoring difficulties. For it is not only time-consuming to monitor the implementation of a treaty but the process can also prove problematic when States Parties delay to fulfil their reporting duties. In comparison, the policy approach, though not legally binding, creates a goal and guidelines to achieve that goal. The guidelines are more practical and detailed than those set out in the case of a treaty; for example, Nairobi Forward-looking Strategies are more detailed and comprehensive than CEDAW. Moreover, it is easier for governments to accept this strategy as a world conference can involve more countries, inter-governmental organisations and non-governmental organisations.⁷

1.1 Policy Based Approach

This section is devoted to the policy-based approach that consists of two parts. One is the initiation and enforcement body (Commission on the Status of Women) while the other is the form of this approach, as manifested in the world conferences on women.

1.1.1 Commission on the Status of Women (CSW)

The UN Charter designates the General Assembly, the Economic and Social Council, and the Secretariat as the main organs responsible for human rights. In

⁷ *Ibid.*

1946, the Council established the Commission on Human Rights "with external terms of reference, including making studies, preparing recommendations and drafting international instruments on human rights."⁸ Recognising that the Commission needed advice on problems related to women, a Subcommission on the Status of Women was also established. In the same year, the Subcommission was expanded to a full Commission that reported "to the Council in relation to policies to promote women's rights in the political, economic, civil, social and educational fields."⁹ The 45 governmental representatives of its members normally meet for eight days annually. The main duty of the Commission consists of three parts. The first is "to prepare recommendations and reports to the Economic and Social Council on promoting women's rights" in all walks of life.¹⁰ The second is to prepare recommendations and reports to the council on "urgent problems requiring immediate attention in the field of women's rights with the object of implementing the principle that men and woman shall have equal rights, and to develop proposals to give effect to such recommendations".¹¹ The third is to promote equality, development and peace, to monitor the implementation of policies and strategies for the advancement of women, and to review and appraise any progress made. The Commission is also responsible for drafting declarations and treaties for the protection of women's human rights. The

⁸ Shaw, M.N. (1997) *International Law*, Cambridge University Press, p. 226.

⁹ Steiner, H. & Alston, P. (2000) *International Human Rights in Context--- Law, Politics, Morals*, Oxford University Press, p. 598.

¹⁰ *Ibid.*

¹¹ *Ibid.*

Declaration on the Elimination of Discrimination Against Women and the Convention for the Elimination of All Forms of Discrimination Against Women represent the achievements of the Commission.

1.1.2 International Women's Year

The First World Conference on Women was held in Mexico City between June 19th and July 2nd, 1975. The conference adopted the World Plan of Action for the Implementation of the Objectives of International Women's Year and Mexico Declaration. In the same year, the UN General Assembly declared 1976-1985 as the UN Decade for Women.¹² The conference attracted over 1,000 representatives from 133 countries. It marked a change in UN's policy towards women, which became more active in pursuing women's welfare.¹³

1.1.3 The World Conference of the United Nations Decade for Women

The UN held the second world conference on women in Copenhagen from July 14th -30th, 1980. The conference evaluated the progress made in the first half of the UN Decade for Women and passed a Program of Action for the Second Half of the UN Decade for Women. The general objective of the conference

¹² Pietila, H. & Vickers, J. (1994) *Making Women Matter--- the Role of the United Nations*, London and New Jersey: Zed Books Ltd, pp. 78-80.

¹³ *Ibid.*

was the promoting of equality, development and peace. The specific objectives were defined as: employment, health and education.¹⁴

1.1.4 The World Conference to Review and Appraise the Achievements of the UN Decade for Women

From July 15th until 26th, 1985, the UN held the third world conference on women in Nairobi: the UN World Conference to Review and Appraise the Achievements of the UN Decade for Women. It declared the following purposes: (1) to review and appraise the progress achieved and the obstacles encountered in attaining the goals and objectives of the UN Decade for Women; (2) to adopt forward-looking strategies of implementation for the advancement of women for the period up to the year 2000.¹⁵

1.1.5 The Fourth World Conference on Women

The Fourth World Conference on Women was held in Beijing from September 4th to 15th, 1995. The main objectives were to review and appraise the advancement of women since 1985, to adopt a Platform of Action focusing on the key obstacles faced by women, and to decide on tasks to be achieved in

¹⁴ *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace*, United Nations, New York, 1980, Sales No. E.80. IV.3.

¹⁵ Pietila, op. cit., n. 12, at pp. 4-5.

1996-2000 for the implementation of the Nairobi Forward-looking Strategies.¹⁶

The Fourth World Conference on Women was the largest global conference on women. There were 45,000 women from all over the world gathered together and they drafted the Beijing Declaration and Platform for Action, an agenda for women's empowerment.¹⁷

Ten years after the Nairobi Conference, equality between men and women had not been achieved and this formed the basis for the Beijing Declaration. In spite of achieving some of the targets that were set, namely the breaking down boundaries of gender division, the entry of women into male-dominated professions and the increase in the number of men sharing family responsibilities, most of the goals set by the Nairobi Conference had not been reached.¹⁸

In reviewing the progress made since the Nairobi Conference, the attendees of the Beijing Conference listed 12 critical areas of concern that required action within the next five years. They addressed the following areas and their relationships with women: poverty, education, health care, conflict, economy, decision-making, promotion of the advancement of women, women's human rights, stereotyping of women in media, environment, rights of the girl child, and violence against women.¹⁹

¹⁶ *Ibid.*, p. 160.

¹⁷ "Black Women and the World Conference" (1995) 12 *Ebony* 44.

¹⁸ Beijing Declaration and Platform for Action, Advanced Unedited Draft, UN Fourth World Conference on Women, Platform for Action, p. 28, September 15, 1995, available at [gopher://gopher.undp.org:70/00/un.confs/women/off/a--20.en](http://gopher.undp.org:70/00/un.confs/women/off/a--20.en).

¹⁹ Platform for Action, Chapter III, Critical Areas of Concern, UN, Report of the Fourth World Conference on Women, Beijing, September 4-15, 1995, pp. 16-17.

The issue of Violence against women stood out in the conference as it was the first time for a world conference on women to list it as one of the 12 areas of concern. In the Beijing Declaration, No.19 states, "Prevent and eliminate all forms of violence against women and girls;"²⁰ In the Platform for Action, chapter IV, 'D. Violence against women', it is stated that,

Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all states and should be addressed.²¹

Furthermore, in the Platform for Action, there are definitions of violence against women, including violence in the family.²² There are also detailed actions and guidelines to be taken by governments, international organisations and non-governmental organisations to address the problem.²³

The wording of the definition of violence against women in the Platform for Action is groundbreaking as it constitutes the first instance when the barrier between violence in the public and that in private realms are considered as equally unacceptable. The definition states that "Acts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the state, instil fear and insecurity in women's lives and are obstacles to the achievement of equality and for development and peace."²⁴

²⁰ UN, *Report of the Fourth World Conference on Women*, Beijing, September 4-15, 1995, p. 4.

²¹ *Ibid.*, p. 48.

²² *Ibid.*, p. 49.

²³ *Ibid.*, pp. 51-55.

²⁴ Platform for Action, paragraph.117.

Violence against women is subjected to interference by the government and relevant organisations regardless of whether it happens in the public or private domain. The Chinese government's response to it will be discussed in detail in Chapter 4.

1.2 Treaty Based Approach

This section aims to explain the treaty-based approach of the UN in addressing human rights. A treaty is a legally-binding document that delineates the obligations of States Parties. This approach consists of several major treaties, namely Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and Convention on the Elimination of All Forms of Discrimination against Women.

1.2.1 Universal Declaration of Human Rights

The first human rights document is the monumental Universal Declaration of Human Rights (UDHR), passed by the General Assembly on December 10, 1948.²⁵ It is the basic foundation of the international human rights law. Articles 1 and 2 of the UDHR state that, "All human beings are born free and equal in dignity and rights" and "Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, colour,

²⁵ UN General Assembly, Resolution 217A (III), December 10, 1948.

sex..." Although this statement does not place special emphasis on the rights of women, the UDHR embodies the spirit of equal enjoyment of human rights between men and women.²⁶

Article 16 grants women equal rights with men in the family. It states that men and women "are entitled to equal rights as to marriage, during marriage and at its dissolution." It stipulates that marriage shall be free of interference of a third party and must have "full consent of the intending spouses". Article 16 lays a foundation for a free and equal relationship between couples within the family.²⁷

Article 12²⁸ and the final part of article 16²⁹ pertain to the protection of the family. The contents of the two articles, however can become a double-edged sword, because on the one hand, they require the state to ensure the safety and privacy of family, but on the other hand, they actually leave the infringement of human rights in the family unattended. As UDHR is the foundation of all later conventions, it also erects a barrier between public and private domains in international laws.³⁰

²⁶ Reanda, op. cit., n.4 at p.11. Prado, op. cit., n.4, at p. 1. Stamatopoulou, E. "Women's Rights and the United Nations" in Peters, J. & Wolper, A. (1995) *Women's Rights Human Rights*, London: Routledge, p. 37.

²⁷ Stamatopoulou, *ibid.*, p. 37.

²⁸ Article 12 of UDHR states, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

²⁹ Article 16 (3) of UDHR states, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

³⁰ Bunch, C. "Transforming Human Rights from a Feminist Perspective", p. 14. Sullivan, D. "The Public/Private Distinction in International Human Rights Law", p. 126. Charlesworth, H. "Human Rights as Men's Rights", p. 107 in Peters, J. & Wolper, A. (1995) *Women's Rights Human Rights*, London: Routledge. Ali, op. cit., n. 5, at p. 197.

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The UDHR defines human rights broadly and symbolises a world vision of respect for all people. Little elaboration has been made from the point of view of women. Although violations of women's rights can be interpreted as forbidden under certain articles, as in the following which states that "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment"³¹, yet the UDHR does not touch the major domain of women's life (violence both in the public and private areas) nor does it provide any means of protection.³²

Since the adoption of the UDHR, the principle of non-discrimination on the basis of sex has been clearly enshrined in international law. In addition to the principle of non-discrimination, the principle of protecting women's human rights is also contained in the following conventions: Slavery Conventions (1926);³³ Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);³⁴ Equal Remuneration Convention (1951);³⁵ Convention on the Nationality of Married Women (1952);³⁶ Convention on the Political Rights of Women (1952);³⁷ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962);³⁸ Discrimination (Employment and Occupation) Convention

³¹ Article 5 of the UDHR, Ghandhi, P.R. (1995) *International Human Rights Documents*, London: Blackstone Press Limited, p. 22.

³² Bunch, op. cit., n. 30, at p. 13.

³³ 266 UNTS 3 (1957).

³⁴ 96 UNTS 272 (1950). This Convention mainly protects women as they are the major targets of such traffic and exploitation.

³⁵ ILO Convention No. 100, reprinted in 165 UNTS 303 (1951).

³⁶ 309 UNTS 65 (1957)

³⁷ 193 UNTS 135 (1953).

³⁸ 521 UNTS 231 (1962).

(1958); Convention against Discrimination in Education (1960);³⁹ Declaration on the Protection of Women and Children in Emergency Armed Conflict (1974); Convention on the Rights of Migrant Workers and Members of their Families (1990).⁴⁰ In addition, there are several documents that have played significant roles in women's human rights discourse. They are: The International Convention on Civil and Political Rights (1966);⁴¹ International Covenant on Economic, Social and Cultural Rights (1966);⁴² Declaration on the Elimination of Discrimination Against Women (1967);⁴³ Convention on the Elimination of All Forms of Discrimination against Women (1979);⁴⁴ Vienna Declaration and Programme of Action (1993); Declaration on the Elimination of Violence against Women (1993).⁴⁵

The concept of human rights is still in the process of development, which means that more content is being added to its discourse. Before the Second World War, the term "human rights" indicated civil and political rights, which are frequently referred to as 'first generation rights'. Economic, social and cultural rights are referred to as 'second generation rights'.⁴⁶ The third generation rights came into being in 1986 when the right to development was recognised by the UN's Declaration on the Right to Development.⁴⁷ The

³⁹ 429 UNTS 93 (1960).

⁴⁰ *A Compilation of International Instruments*, E. 93. XIV.1, UN.

⁴¹ 999 UNTS 171 (1966).

⁴² 993 UNTS 3 (1966).

⁴³ General Assembly Resolution 2263 (XXII), UN Doc. A/6717 (1967).

⁴⁴ 1249 UNTS 13 (1979).

⁴⁵ GA Res 48/104 (1994).

⁴⁶ Davis, M.C. (1995) *Human Rights and Chinese Value*, Oxford: Oxford University Press, p. 152.

⁴⁷ *Ibid.*

distinguishing feature of the third generation rights lies in its focus on collective rights, among which the right to development and the right to self-determination are the two core principles.⁴⁸ As already mentioned in the introductory chapter, domestic violence breaks women's spirit and destroys their self-esteem. This infringement seriously hinders women's rights of development and self-determination; therefore the UN's practice of safeguarding women's rights of development and self-determination becomes the gospel message for abused women.

1.2.2 International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

The Universal Declaration of Human Rights (UDHR) recognises two sets of human rights, namely civil and political rights, and economic, social and cultural rights. Furthermore, two separate covenants put provisions of the UDHR into legally binding obligations. They are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁹ The principle of non-discrimination on the basis of sex stated in Article 2 of UDHR is stated in greater detail in ICCPR and ICESCR.⁵⁰

⁴⁸ Wallace, R. M. M. (2002) *International Law*, London: Sweet & Maxwell, p. 211.

⁴⁹ Steiner, op. cit., n. 9, at p. 237.

⁵⁰ *Ibid.*, p. 143.

ICESCR states that all workers must be paid equally for work of equal value, "in particular women being guaranteed conditions of work not inferior to those enjoyed by men".⁵¹ It also provides for the protection of women and women's maternity requirement. Article 10 states that "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits." ICESCR also stresses that the family is under the protection of the state. Any marriage must be entered freely with the consent of both parties.⁵²

The responsibility of the state is clearly stated in part II, articles 2, 3 and 4. Compared with Universal Declaration of Human Rights, the Covenant states more specifically the duties of States Parties, and reflects the progress in the drafting of legally binding human rights instruments.

No special implementation machinery was set up under this Covenant when it took effect. It was under the general supervision of the Economic and Social Council. The Council decided, in its decision of 1978/10 of May 3rd, 1978, to establish a sessional working group to assist the Council to consider reports submitted by States Parties.⁵³ By Council resolution of 1985/17 of May 28th, 1985, the sessional group was renamed the "Committee on Economic, Social and Cultural Rights".⁵⁴ According to article 16 of the Covenant, States Parties are required to submit reports on measures adopted and progress made,

⁵¹ Article 7 of ICESCR.

⁵² Article 10 of ICESCR.

⁵³ www.un.org/esa/coodination/ecosoc/sub-bodies.htm

⁵⁴ *Ibid.*

indicating any "factors and difficulties affecting the degree of fulfilment of obligations."⁵⁵ The guidelines for drafting reports invite states to provide information on measures taken to eliminate sex-based discrimination, which includes "such customs, ancient laws and practices" as may affect the enjoyment of certain rights guaranteed by the Covenant, such as freedom of choice in marriage. Only a few countries include information on promoting equality between men and women. These reports only describe legal and constitutional provisions instead of describing the actual situation of women in these countries.⁵⁶

The UDHR provides that everyone has the "right to an effective remedy by the competent national tribunal"⁵⁷ for violations of fundamental rights. ICCPR provides a detailed remedial structure by stating that States Parties agree to 'ensure' to all persons within their territory the rights recognised by the Covenant, and to adopt such legislative or other measures as may be necessary to achieve that goal. In addition, States Parties are duty-bound to undertake to 'ensure' that any person whose rights are violated shall have an effective remedy, and that the competent authorities shall enforce such remedies when granted. They undertake "to develop the possibilities of judicial remedy".⁵⁸ ICCPR insists on equality between men and women during marriage and at its dissolution.⁵⁹ It provides equal opportunities to men and women in public

⁵⁵ Article 16 of ICESCR.

⁵⁶ UN, Economic and Social Council, (E/1979/4; E/1980/22).

⁵⁷ UDHR, article 8.

⁵⁸ Steiner, *op. cit.*, n. 9, at p. 144.

⁵⁹ Article 23 of ICCPR.

life.⁶⁰ Article 26 declares equality before the law and the principle of non-discrimination on any ground such as race, colour, sex, etc. What is more important and effective is that it requires States Parties to take appropriate steps to ensure the effective implementation of this equality. Article 2(1) of the ICCPR states that "each state party...undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present covenant, without distinction of any kind, such as...sex."

Although there are no articles directly addressing domestic violence, the ICCPR has several prohibitions against violence that implicate domestic violence. Article 6(1) provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Article 7 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment." Article 9(1) guarantees that "Everyone has the right to ... security of person." While the ICCPR does not directly mention private violence, including domestic violence, the above provisions can encompass such violence. States Parties are duty-bound to combat domestic violence by virtue of having undertaken "to respect and to ensure" the rights recognised in the covenant.⁶¹

A review mechanism in the field of human rights has been established under Part IV of this Covenant-- the Human Rights Committee. The Committee

⁶⁰ Article 25 of ICCPR.

⁶¹ "The Human Rights Watch Global Report on Women's Human Rights"(1995) *Human Rights Watch* 344.

consists of eighteen experts. They are nominated and elected by States Parties but serve in their individual capacity.⁶² The committee has the power to study reports submitted by States Parties and make general comments, including requiring more information from states. Under the supervision of the committee, States Parties are requested to specify measures adopted to implement the Covenant and to report on any progress made, including difficulties and facts that hindered implementation.⁶³ An Optional Protocol enables the Committee to consider petitions made by individuals appealing against violations of the rights set forth in the Covenant and from an optional provision for complaints between states.⁶⁴ The Committee empowers the Covenant through an enforcement mechanism which enables States Parties to make progress in their human rights discourse each year. This is considered as the most far-reaching system of international review. However, there are some restrictions placed on the Committee, namely its lack of power to judge whether States Parties have fulfilled their obligations under the Covenant or its inability to make specific recommendations to States Parties.⁶⁵ These restrictions obviously diminish its supervision and enforcement powers.

An analysis of the reports of the Committee shows that although the condition of women is included in these reports, the focus remains on the legal rather than the actual situation of women, therefore any discrimination against

⁶² See articles 28-32 of ICCPR.

⁶³ Article 40 of ICCPR.

⁶⁴ The Optional Protocol was signed in 1966 and took effect from March 23, 1976. See *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. I, 1985 and vol. II, 1990.

⁶⁵ Reanda, L. "Human Rights and Women's Rights: the United Nations Approach"(1981) 3 *Human Rights Quarterly* 14.

women that is not defined in the Covenant is ignored. In addition, the report on the status of women is limited to certain areas that are considered to be women's rights rather than the full human rights protected by the Covenant. Issues like family rights and political rights are mentioned in reports while issues like dowry systems, prostitution, violence in families is left out.⁶⁶

The establishment of a Covenant and the Human Rights Committee is seen as a milestone in the international human rights process. However, many issues that infringe on women's rights are not covered, especially issues related to women in their private life. Yet, despite its shortcomings, this committee is being used by women to protect their own rights. For example, in the Lovelace case,⁶⁷ the Committee judged that Canada was in breach of article 27 of the Covenant, because its law stipulated that an Indian woman was not allowed to return to her home on an Indian reservation, when her marriage to a non-Indian broke down.⁶⁸ Similarly, in the Mauritian Women case⁶⁹, the Committee held that Mauritius was in breach of relevant articles in the Covenant as the foreign husbands of Mauritian women were likely to be deported while the foreign wives of Mauritian men would not suffer the same fate.⁷⁰

⁶⁶ *Ibid.*, at p. 15.

⁶⁷ 1981 Report of the Human Rights Committee, A/36/40, p. 166.

⁶⁸ Shaw, *op. cit.*, n.8, at p. 239.

⁶⁹ *Ibid.*, p. 239.

⁷⁰ *Ibid.*

1.2.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Although there were several conventions and declarations addressing specific women's rights prior to the Declaration on the Elimination of Discrimination against Women, the UN failed to deal with discrimination against women in a comprehensive way. Meanwhile there were criticisms that the general human rights regime "was not, in fact, working as well as it might to protect and promote the rights of women. Thus, the General Assembly, on December 5th, 1963, adopted its resolution 1921 (XVIII), in which it requested the Economic and Social Council to invite the Commission on the Status of Women to prepare a draft declaration."⁷¹ The General Assembly adopted the Declaration on the Elimination of All Forms of Discrimination against Women on November 7th, 1967.⁷² In 1974, the Commission on the Status of Women decided to prepare "a single, comprehensive and internationally binding instrument to eliminate discrimination against women."⁷³

The World Plan of Action for the Implementation of the Objectives of the International Women's Year adopted by the Mexico Conference called for a convention on the elimination of discrimination against women.⁷⁴ The Commission on the Status of Women quickly put the idea into practice so that

⁷¹ *Progress Achieved in the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*—Report by the Committee on the Elimination of Discrimination against Women, A/Conf.177/7, June 21, 1995.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Chinkin, C. "Gender Inequality and International Human Rights Law" in Hurrell, A. & Woods, N. (1999) *Inequality, Globalisation, and World Politics*, New York: Oxford University Press, p. 102.

the Convention would be ready for the 1980 Copenhagen mid-decade review conference (the Second World Conference on Women).⁷⁵ The Copenhagen Conference speeded up the ratification of the Convention as 50 countries signed it during the Conference.⁷⁶ The Convention, issued in the thirty-fourth session of the General Assembly in 1979, is the first international instrument to deal comprehensively with the condition of women and to establish standards that are binding on States Parties.⁷⁷ There were 174 States Parties to the Convention as of June 2003.⁷⁸

Article 1 defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."⁷⁹ Thus, States Parties to the convention are duty bound to take all necessary legislative, judicial, administrative, or other measures to guarantee for women the enjoyment of human rights and fundamental freedoms on the basis of equality with men.⁸⁰ Some of the provisions require immediate steps to be taken by states to ensure equality, while others require long term efforts to take "all appropriate measures" or "all necessary measures" to eliminate discrimination.⁸¹

⁷⁵ *Op. cit.*, n. 71.

⁷⁶ Pietila, *op. cit.*, n.12, at p. 80.

⁷⁷ UN, General Assembly, Resolution 34/180, December 18, 1979.

⁷⁸ www.un.org/womenwatch/daw/cedaw/states.htm

⁷⁹ Article 1 of the Women's Convention.

⁸⁰ Women's Convention, article 2 and 3.

⁸¹ These two phrases are the most frequently used ones in the Women's Convention.

Part IV of CEDAW is about the equal rights between men and women before the law and within the family. Article 16 granted women the rights to choose a spouse and enter into marriage freely, to enjoy equal rights within the marriage, and at its dissolution. This part is of great significance, because "women's roles, responsibilities, and recognised capacities within the family are frequently limited by law and by culture and affect the exercise of their capacities outside the family as well."⁸² In many legal systems or actual practices in many countries, women must establish more grounds and acquire more evidence than their male counterparts in order to get a divorce. Men can easily obtain a divorce if their wives have engaged in adultery, however women have to establish more solid evidence against their husbands.⁸³ The Women's Convention spells out the point that women shall be equal with men before the law and shall have full legal capacity equal to that of men.⁸⁴ Article 16 also covers the equality in property division in divorce. This is also very important, as women's work at home is not valued, hence without this equality, they risk being left with nothing after the dissolution of their marriage.⁸⁵

CEDAW makes clear the duties of States Parties in enforcing these articles. Article 15 requires States Parties to protect women's rights in administrating property and enjoying equal rights "in all stages of procedure in

⁸² Freeman, M. A. "The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention" in Peters, J. & Wolper, A. (1995) *Women's Rights Human Rights*, London: Routledge, pp. 149-150.

⁸³ *Ibid.*, at p. 159.

⁸⁴ Women's Convention, article 15.

courts and tribunals". Article 16 requires States Parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations." As discrimination against women in the family is based on religious or customary laws, the convention requires States Parties to take all appropriate measures, including judicial measures to ensure equality between men and women within marriage. States Parties are also required to ensure that individuals can marry under a civil marriage code so as to avoid suffering inequality under customary law and common practices.⁸⁶

Matrimony represents a milestone in women's life as it changes their economic and social roles. However, marriage also brings about many limitations to women rather than liberating them. First of all, many women do not have the freedom to choose their marriage partners. Secondly, women in the family, enjoy far less decision-making power when it comes to economic, legal and all other matters than their husbands. Thirdly, when a divorce is unavoidable, women do not enjoy equal rights in the division of property and children. They risk losing the mutual property and guardianship of children. In some countries where dowry or the bride's wealth is a common practice, the bride's wealth must be returned to the husband's family in the event of a divorce. This puts much pressure on women to stay in an abusive relationship as they cannot afford to pay back.⁸⁷

⁸⁵ Article 16(h) of the Women's Convention states that a couple has "the same rights...in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration".

⁸⁶ Peters, J. & Wolper, A. (1995) *Women's Rights Human Rights*, London: Routledge, p. 157.

⁸⁷ *Ibid.*, at p. 158.

In general, the convention contains guarantees of equality and freedom from discrimination by States and by private actors in all areas of public and private life. To a large extent, it codifies the existing gender-specific and general human rights instruments containing guarantees of freedom from discrimination on the ground of sex, though it adds some significant new provisions. It thus requires equality in the fields of civil and political rights, as well as in the enjoyment of economic, social and cultural rights.⁸⁸ This recognises the fact that for women the guarantee of the former category of rights can be meaningless without paying attention to the latter category of rights.⁸⁹

The Convention has set an international standard for equality between men and women. It not only defines the concept of discrimination against women, but also goes further to require equality of access and opportunity that will pave the way towards a more comprehensive equality. What is more important and of long-term value is that it has become the framework for national anti-discrimination legislation. Its explicit application to discrimination in the field of private life as well as public life is innovative provisions.⁹⁰

Most importantly, the Convention has made an effort to break down the barrier between the public and private.⁹¹ As a matter of fact, the traditional

⁸⁸ Byrnes, A. "Using Gender-specific Human Rights Instruments in Domestic Litigation: the Convention on the Elimination of all Forms of Discrimination against Women" in Adams, K. & Byrnes, A. (1999) *Gender Equality and the Judiciary*, London: Common Wealth Secretariat, p. 51.

⁸⁹ Chinkin, op. cit., n.74, at p. 105.

⁹⁰ *Ibid.*, at p. 104.

⁹¹ *Ibid.*, at p. 105.

division between public and private is the root of women's inferiority as they are confined to the private arena of the family and the home. This leads to the lack of participation of women in decision-making in public domains. Men occupy the public domain in paid jobs. They exercise power and authority through the structures of law, economy, politics and governmental activities. The public domain is guaranteed by laws while the private domain occupied by women is devalued and unprotected. The breakdown of the barrier between the public and the private domain has brought domestic violence into the spotlight of international human rights discourse.

1.2.4 Institutional Efforts

Article 17 of the convention establishes the Committee on the Elimination of Discrimination against Women with the aim of considering the progress made in the implementation of the Convention's provisions.⁹² The committee is responsible to receive and examine initial and periodic reports from States Parties or whenever the Committee requests such a report.⁹³

Based on its assessment of the reports and information received from States Parties, the Committee has also issued general recommendations to all

⁹² Article 17 of the Women's Convention.

⁹³ Op. cit., n. 71.

States Parties and pointed out "specific steps that they should take to fulfil their obligations under the convention."⁹⁴

General recommendations of the CEDAW committee have brought violence against women to the forefront in recent years. Three general recommendations have particularly addressed the issue of violence against women. General recommendation 12 issued in 1989 recommends to the States Parties the addition of information in their periodic reports about any legislation in force as well as other measures being adopted to eradicate violence in women's everyday life, including domestic and professional settings. Information about support services for women who are the victims of violence and statistical data on violent incidents targeted at women should also be available in periodic reports. This recommendation pushes governments to take legal and non-legal actions to eradicate violence against women, whilst providing support services to women who are victims of aggression or abuse. State monitoring of violence against women is also strongly recommended.

General recommendation 19 imposes more detailed responsibility on States Parties to take various measures to fight against violence.⁹⁵ It points out that "discrimination under the Convention is not restricted to action by or on behalf of Governments (see article 2(e), 2(f) and 5)... States may also be responsible for private behaviours if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for

⁹⁴*Ibid.*, at pp. 9-12.

⁹⁵ General recommendation 19 was issued at the 11th session in 1992.

providing compensation."⁹⁶ The convention addresses family violence as "one of the most insidious forms of violence against women. Meanwhile the consequences of this form of violence are severe because they "put women's health at risk and impair their ability to participate in family life and public life on a basis of equality."⁹⁷ In the section on Specific Recommendations, Article 24 (a) breaks the barrier between the public and private distinction by stating that "States Parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act." Article 24 (b) requires States Parties to ensure laws against family violence and give adequate protection to all women, and stipulates that appropriate protective and support services should be provided for victims. The same article (k) reiterated the responsibility of States Parties to establish support services for victims of family violence and other forms of gender-based violence, "including refuges, specially trained health workers, rehabilitation and counselling".⁹⁸ It urges States Parties to state the extent of these problems and indicate the measures that have been taken to curb them and to assess their effect.⁹⁹ This general recommendation even lists out the measures necessary to overcome family violence. It includes: criminal penalties as well as civil remedies (i), legislation to abolish customary practices of honour killing within a family (ii), services including refuges, counselling and rehabilitation programs (iii), rehabilitation

⁹⁶ Violence against women: 29/01/92. CEDAW General recom. 19, A/47/38. Article 9.

⁹⁷ *Ibid.*, article 23.

⁹⁸ *Ibid.*, article 24 (k).

⁹⁹ *Ibid.*, article 24 (n).

programs for perpetrators, and support services for incest and sexual abuse victims (v).¹⁰⁰

In its resolution 44/82, the General Assembly of the UN designated the year 1994 as the International Year of the Family. CEDAW issued general recommendation No. 21 to "stress the significance of compliance with women's basic rights within the family as one of the measures which will support and encourage the national celebrations that will take place."¹⁰¹ Three articles which emerged from the convention and which have special significance for the status of women in the family have been re-illustrated in this general recommendation. They are articles 9 (nationality), 15 (equality between men and women before the law) and 16 (elimination of discrimination against women in all matters relating to marriage and family relations). The implementation of these articles would improve women's overall status at home so as to eliminate domestic violence that is caused by the unequal relationship between a couple. General recommendation No. 21 particularly stresses the responsibility of States Parties to comply with general recommendation No. 19 to "ensure that, in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals."¹⁰²

The optional protocol to CEDAW came into force on December 22nd 2000. Two important procedures, namely the communications procedure and

¹⁰⁰ *Ibid.*, article 24.

¹⁰¹ CEDAW General recommendation 21, Equality in marriage and family relations.

¹⁰² *Ibid.*, article 40.

the inquiry procedure, provide more enforcement power to the convention. The former grants individual and groups of women the right to complain to the CEDAW about violations of the Convention provided that domestic procedures are exhausted. The latter enables the Committee to investigate the grave and systematic abuse of women's human rights/happened in States Parties.¹⁰³ This mechanism is recent and has not yet been tested. Moreover, China is not a signatory to the optional protocol, so this is not presently a possible forum for Chinese women.

These measures are listed as necessary steps for States Parties to fight against domestic violence. However, the implementation of these articles is used in a selective manner when domestic convenience so requires. Many of the recommendations are still routinely ignored. Without a strong domestic constituency, conventions and treaties can hardly have local impact. My fieldwork data¹⁰⁴ shows how far away from women's lives some of the provisions of treaties and general recommendations on violence against women appear.

1.2.5 The Impact of Women's Convention on State Laws

CEDAW has impact on national laws to improve the position of women in two ways. One is its requirements for States Parties to fulfil their responsibilities of

¹⁰³ Relevant information is available at www.un.org.

¹⁰⁴ In Chapter 4, I will illustrate how human rights instruments in the UN have impacted on Chinese national mechanism. In Chapters 7 and 8, I will evaluate whether the abused women in my sample viewed domestic violence as a violation of their human rights and whether they were satisfied with the service the state provided.

modifying its political, social, economic and cultural norms to eliminate discrimination against women while the other is that women can file cases to protect their rights through their national courts and legislation.

Article 2 of CEDAW commands States Parties to "condemn discrimination against women in all forms" and to "agree to pursue by all appropriate means, and without delay, a policy of eliminating discrimination against women."¹⁰⁵ These "appropriate means" include embodying the principle of gender equality in national constitutions and other legislation, establishing "legal protection of the rights of women on an equal basis with men",¹⁰⁶ and adopting measures that would ensure gender equality in both the public and private sectors of society.

States Parties are further required to "modify the social and cultural patterns of conduct of men and women"¹⁰⁷ to prevent discrimination in the private life of their people and to change discriminatory customs. This has great impact on those who have used the shields of tradition, custom, or religion to perpetuate gender discrimination and inequality.

As a matter of fact, discrimination in the private lives of people is a more common way of infringing women's human rights. Such a practice is deep-rooted in the traditions, customs, or religions of any countries in the world. Therefore, such a requirement by CEDAW hits the core of domestic violence. My fieldwork analysis in Chapters 6, 7, and 8 will demonstrate how customs and cultural traditions in Chinese society justify violence against

¹⁰⁵ Convention on the Elimination of Discrimination against Women, article 2.

¹⁰⁶ *Ibid.*, article 2 (c)

women at home.

The Convention sets a standard for all States Parties to abide by. It has special significance because in many countries, anti-discrimination articles have been added to national laws. The Convention, when used by courts to rule against discriminatory state law, has challenged specific laws pertaining to particular countries, an act which resulted in the creation of an international regime.¹⁰⁸ Understanding the 'norm' has great positive effect on the judicial system in the country, and affects the formulation of the discourse on equality therein.

Unfortunately, one major problem that women face everyday is not addressed by the Convention—violence in the family, the work place and during times of war. Although violence against women is mentioned in the provision prohibiting the traffic and prostitution of women, it is not specifically addressed in this important and comprehensive treaty. Such a limitation of CEDAW demonstrates the fact that international human rights law is detached from women's life experience, although there is a potential for women to fill the gap between international human rights law and national law by filing for cases as Mrs. Dow did.

1.2.6 Women's Rights, Human rights

The history of women's life is a history of invisibility and confinement in the home. They have long been excluded from public life; therefore the initial

¹⁰⁷ *Ibid.*, article 5.

¹⁰⁸ The case of Dow vs. Attorney General demonstrates the power of international laws in safeguarding women's rights in different jurisdictions.

concept of human rights has less concern for women's rights and their life experience as women. Men who first developed the cause of human rights feared that their civil and political rights were being violated in the public sphere, so the first generation of human rights concept put much emphasis on the protection of civil and political rights.¹⁰⁹ But violations in the private domain, remained largely ignored because men in their capacity as masters of the domestic sphere, did not fear the violation of their rights there. The second generation of human rights concept focus on Socio-economic issues, such as the rights to food, shelter and work, and this discourse enriched and widened the concept of human rights, as it touched more areas of women's life; therefore it becomes vital to address women's concerns.¹¹⁰

The structures and institutions of international legal order under the UN are masculine and from a male perspective. The Secretariat of the UN is a point in case. Very few women are placed in decision-making positions although 40% of Secretariat staff are women. Such a fact forms a sharp contrast to Article 8 of the Charter which states that "The UN shall place no restriction on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."¹¹¹

The invisibility and silence of women is also reflected in international bodies with special functions in developing and enforcing international law.

¹⁰⁹ Bunch, op. cit., n.30, at p. 13.

¹¹⁰ *Ibid.*, at p. 14.

¹¹¹ Charlesworth, op. cit., n. 30, at p. 107.

Only one woman acted as a judge on the International Court of Justice.¹¹² No woman has ever been elected to the International Law Committee. Except for the Committee on the Elimination of Discrimination against Women, of which all members are women, women remain largely underrepresented in UN human rights bodies. In 1993, there was one woman (out of eighteen members) on the Committee on the Elimination of Racial Discrimination, two out of eighteen on the Economic, Social and Cultural Rights Committee, three out of eighteen on the Human Rights Committee, and two out of ten on the Committee Against Torture.¹¹³

The danger in having a male-dominated international body is that "issues traditionally of concern to men are seen as general human concerns; 'women's concern,' by contrast, are regarded as a distinct and limited category."¹¹⁴ The concept and practice of human rights discourse is doomed to be male-centred. Unless the experiences and voices of women contribute to the mainstream international legal order, a fair and neutral human rights discourse is not likely to come into being.

The lack of recognition of women's rights as human rights is reflected in the fact that little elaboration of rights in UN charter and Covenants has been made and interpreted from the point of view of women. There are far less international human rights law and enforcement bodies that focus on women.

¹¹² Mme. Suzanne Bastid was judge *ad hoc* in Application for Revision and Interpretation of the Judgment of February 24, 1982 in the Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), (1985) ICJ Rep.4.

¹¹³ Charlesworth, *op. cit.*, n.30, at p. 105.

¹¹⁴ *Ibid.*, p. 105.

"Thus the dominant definition of human rights and the mechanisms to enforce them in the world today are ones that pertain primarily to the types of violation that the men who first articulated the concept most feared. These definitions have tended to exclude much of women's experiences (and that of many non-elite men as well) because these groups have not been well represented in human rights discourse."¹¹⁵

1.3 Violence Against Women as a Violation of Human Rights

1.3.1 Vague Awareness in 1975

It took quite some time for domestic violence to be recognised as violation of women's human rights in the international human rights discourse. When the International Women's Year World Conference convened in Mexico City in 1975, the proceedings reflected an awareness of conflicts arising among members of the family. Paragraph 131 of Plans of Action provided general solutions to this problem. It stated that "In order to assist in the solution of conflicts arising among members of the family, adequate family counselling services should be set up wherever possible and the establishment of family courts staffed with personnel, including women, trained in law as well as in various other relevant disciplines should be considered."¹¹⁶ In addition to

¹¹⁵ Bunch, op. cit., n.30, at p. 13.

¹¹⁶ *Report of the World Conference of the International Women's Year*, Mexico city, June 19 - July 2, 1975, UN, p. 27.

counselling services and more responsive family courts, initiative articles appeared in the report. It was argued that "women and men have equal rights and responsibilities in the family and in society" and men should participate more in family life in order to enable women to participate in activities outside of the family.¹¹⁷ However these articles were drowned by various and sundry concerns centred on the main themes of the conference, which were: the promotion of equality, the ensuring of the development of women and the recognition of the contribution of women to world peace.¹¹⁸

The final document of the Nairobi Conference held in 1985, the Forward-looking Strategies for the Advancement of Women, is the first document where the concept of violence is defined comprehensively and where violence at a personal level as well as an international level is recognised. Based on the main themes of the conference, equality, development and peace, the document outlines the obstacles hindering the advancement of women, and delineates measures to overcome them, along with strategies to achieve the basic targets at the national level. In the document, the concept of peace was developed in a very significant way for women. It stated clearly that "violence at all levels, personal, social and international, stems from the same roots and should be seen as indications of the same phenomenon. Sustainable peace cannot be achieved without eliminating violence at all levels, including violence against women."¹¹⁹ These Forward-looking Strategies put domestic

¹¹⁷ *Ibid.*, p. 4.

¹¹⁸ *United Nations Action in the Field of Human Rights*, para. 1682. Published by the Centre for Human Rights, Geneva, 1994.

¹¹⁹ Pietila, *op. cit.*, n.12, at pp. 65-66.

violence on an equal footing with other forms of violence which impair the realisation of peace. The expansion of the concept of peace breaks the barrier between public and private violence, which has the potential of leading to a further enjoyment of women's human rights.

The important expansion of the concept is better illustrated in paragraphs 257 and 258, which read as follows:

The questions of women and peace, and the meaning of peace for women, cannot be separated from the broader question of relationships between women and men in all spheres of life and in the family.¹²⁰

Violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and the other objectives of the Decade and should be given special attention. Women victims of violence should be given particular attention and comprehensive assistance. To this end, legal measures should be formulated to prevent violence and to assist women victims. National machinery should be established in order to deal with the question of violence against women within the family and society. Preventive policies should be elaborated, and institutionalised forms of assistance to women victims provided.¹²¹

The Nairobi Forward-looking Strategies call for special attention to be given to violence against women; particularly legal measures and the establishment of national machinery to assist abused women. The document not only lists specific measures to prevent violence against women but also imposes a responsibility on governments.

Paragraph 231 recommends that,

¹²⁰ *The Nairobi Forward-looking Strategies for the Advancement of Women*, published by UN Department of Public Information, New York.

¹²¹ *Ibid.*

Governments should undertake effective measures, including mobilising community resources to identify, prevent and eliminate all violence, including family violence, against women and children and to provide shelter, support and reorientation services for abused women and children. These measures should notably be aimed at making women conscious that maltreatment is not an incurable phenomenon, but a blow to their physical and moral integrity, against which they have the right (and the duty) to fight, whether they are themselves the victims or the witnesses. Beyond these urgent protective measures for maltreated women and children, as well as repressive measures for the authors of this maltreatment, it would be proper to set in motion long-term supportive machineries of aid and guidance for maltreated women and children, as well as the people, often men, who maltreat them.

Furthermore, governments are obliged to take urgent protective measures as well as long-term supportive machineries to fight against violence, including domestic violence. Although this was a very brief recognition of domestic violence, it was enough to establish a basis for more studies on violence against women in the UN system. After the Nairobi Conference, violence against women became one of the priority issues on the agenda of Commission on the Status of Women and the Division for the Advancement of Women. The first book on domestic violence entitled *Violence against Women in the Family* was published in 1989.¹²² Another report by the Commission on the Status of Women was handed over to the UN Economic and Social Council in 1988.¹²³ Unfortunately, both publications are not widely known, therefore they had little impact internationally.

¹²² *Violence Against Women in the Family*, (New York: UN Centre for Social Development and Humanitarian Affairs, 1989), (ST/CSDHA/2) Sales No. E.89.IV.5.

¹²³ Efforts to Eradicate Violence Against Women Within the Family and Society, UN, E/CN.6/1988.6

1.3.2 A Step Forward—Vienna Conference

The UN World Conference on Human Rights in Vienna June 14th-25th, 1993 is a landmark for the UN to take great steps in combating violence against women. Women's rights activists collected almost five hundred thousand signatures from 124 countries, insisting that the Conference should address gender violence.¹²⁴ As a result, the Conference formally recognised the human rights of women as "an inalienable, integral and indivisible part of human rights" and included gender specific violations into the international human rights agenda. The final document of the conference Vienna Declaration and Program of Action has an important chapter entitled "The Equal Status and Human Rights of Women", which spells out more clearly than ever before that women should enjoy the full range of human rights. It includes:

- The full and equal enjoyment by women of all human rights should be priority for governments and for the UN;
- The equal status of women and the human rights of women should be integrated into the mainstream of UN system-wide activity;
- The UN-system and member governments should work towards the elimination of violence against women in public and private life.¹²⁵

¹²⁴ Paul, S. "Combating Domestic Violence through Positive International Action in the International Community and in the United Kingdom, India, and Africa"(1999) Fall *Cardozo Journal of International and Comparative Law*, available in westlaw.

¹²⁵ Vienna Declaration and Programme of Action, chapter 3 "The Equal Status and Human Rights of Women", June 1993, New York, DPI/1394-39399.

The Vienna Conference led to the establishment of a High Commissioner for Human Rights in the 48th General Assembly, which is in charge of UN human rights activities and supervising the Centre for Human Rights through which advisory services and assistance are provided to states.¹²⁶

The Conference speeded up the pace of the UN to fight against violence against women, including domestic violence. In December 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women. In March 1994, the UN Commission on Human Rights appointed its first gender-specific Rapporteur on violence against women.

1.3.3 A Final Document—Declaration on the Elimination of Violence Against Women¹²⁷

The Declaration on the Elimination of Violence against Women significantly adds to the legal definition of the human rights of women as it includes the most common and often ignored phenomenon—violence that women experience in their everyday lives.

The document defines violence as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.¹²⁸

¹²⁶ Pietila, op. cit., n. 12, at p. 131.

¹²⁷ General Assembly resolution 48/104 of December 20, 1993.

¹²⁸ Declaration on the Elimination of Violence against Women, U. N. GAOR, 48th Sess., Agenda Item 111, UN Doc. A/Res/48/104 (1994), article 1.

Furthermore, it is argued that violence against women shall be understood to encompass but not be limited to:

Physical, sexual and psychological violence occurring in the family and in the community, including battering, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, violence related to exploitation, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, forced prostitution, and violence perpetrated or condoned by the state.¹²⁹

The declaration has special significance in the protection of human rights of women for three major reasons:¹³⁰

1. It puts violence against women firmly within the human rights discourse.

The declaration expounds that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms. It states that "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms". The rights of women include liberty and security of person, freedom from torture or other cruel, inhuman, or degrading treatment or punishment.

2. The declaration redefines the concept of violence against women on the basis of women's actual life. It recognises physical, sexual, and psychological violence as well as threats of such harm. The setting of the violence includes not only the community, but also the family. Perpetrators

¹²⁹ *Ibid.*, article 2.

can be state organs as well as individuals.

3. It points out that the root of violence is correlated to gender rather than occurring at random, therefore the state apparatus should be made fully responsible for "failing to demonstrate due diligence in averting or punishing violence against women that occurs in the public and the private sphere."¹³¹

Article 4 of the Declaration lists clearly the duty of states in combating violence. These measures include condemning violence against women and pursuing by all appropriate means a policy of eliminating violence against women. The declaration calls for more states to ratify the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to the Convention. It requires states to "prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."¹³² States are responsible for drafting national plans to promote the protection of women against any forms of violence. Approaches should include measures of legal, political, administrative, financial and cultural nature to promote the protection of women against violence. Measures should also be taken to train relevant law enforcement officers and public officials so as to sensitise them to the needs of abused women. Reports submitted to human rights instruments of UN should

¹³⁰ Bunch, C., Carrillo, R. & Shore, R. "Violence Against Women" in Stromquist, N. P. (1998) *Women in the Third World*, New York & London: Garland Publishing Inc., p. 60.

¹³¹ Stamatopoulou, op. cit., at p. 40.

¹³² Declaration on the Elimination of Violence against Women, article 4

include information about violence against women and the measures taken to implement the declaration.¹³³

The Declaration represents a further step of the UN to protect women from violence. However, the Declaration is implemented in a selective manner among states. Its implementation in China will be explored in detail in the latter part of this thesis. Due to the lack of enforcement power of the Declaration, the Fourth World Conference on Women is another endeavour of the UN to address the issue.¹³⁴

1.4 Problems and Obstacles in the UN Mechanism on Protection of Violence Against Women

The UN has been successful in setting standards in the protection of women's human rights. However, violence against women is still a newly addressed issue in the UN agenda. Problems and obstacles do exist. They are mainly in two areas. While the standard setting is still male-centred, a factor which results in the lack of legal mechanisms in addressing violence against women, the implementation of conventions and declarations is hardly satisfactory.

The process of conceptualisation and definition of human rights is still male-centred. It has not involved significant numbers of women. This is illustrated by the lack of women staff in all UN committees, especially in decision-making organs.¹³⁵ As a result, the international human rights law has

¹³³ *Ibid.*

¹³⁴ This will be discussed in chapter 3.

¹³⁵ Charlesworth, *op. cit.*, n. 30, at p. 105.

been developed to reflect the experiences of men and exclude those of women, leaving protection of violence against women a neglected problem.¹³⁶

Many issues of daily concern to women, such as under-development, the negative impact of economic re-adjustment, and violence, have not been made the subject of legally binding conventions.¹³⁷ Even today, there are no conventions on the elimination of violence against women.

International human rights law has not effectively addressed violence committed by non-state actors nor has it considered violence in the private sphere.¹³⁸ As a matter of fact, my fieldwork in China proves that many women live under the threat of violence for most of their lives. Unless the issue is addressed comprehensively in international human rights law and it cascades to national and local levels women cannot enjoy full human rights.

Governments minimise their responsibilities toward human rights protection by using the excuse of cultural, religious and ethnic varieties. This successfully covers violations against women, especially in areas of family law.¹³⁹ Human rights law at the international level needs to consistently challenge these positions adopted by governments. In addition to the above listed problems, many obstacles have prevented the implementation of the international human rights system from working effectively to improve the situation of women.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

The UN has no power to force any states to accede its conventions and declarations. It is purely up to individual states to decide which convention it chooses to join and fulfil its responsibilities. The Declaration on the Elimination of Violence against Women is an example with only 9 States Parties by the year 2003.¹⁴⁰ To those non-party states, the UN has no supervisory power over them, which means that some countries in the world are left outside of the international human rights regime.

Secondly, States Parties often make reservations, a formal declaration of not accepting as binding upon conventions a certain part or parts of the treaty. This hinders the full implementation of human rights conventions and declarations.

Thirdly, The supervision power of treaty-based committees is limited. While they may have the power to pronounce a state party to violate a convention, they have no judicial powers to order an appropriate remedy. CEDAW's supervision power on the implementation of conventions related to discrimination against women (which can be seen as including violence against women) lies in its public review of reports of individual country and drafting general recommendations. However, it is a common practice for States Parties to delay reports, which results in the general recommendations becoming dated or obsolete. This severely effects the normal function of this reporting system. In addition, DEVAW is only a declaration, which has no legally bounding power to States Parties.

¹⁴⁰ www.un.org

Conclusion

It has been a long process for the UN to recognise that women's rights are human rights and that domestic violence is a form of infringement of women's human rights. Thus there has been a palpable lack of consideration of women's life experiences when drafting human rights treaties. Violence against women, an issue accompanying women's entire life, has long been ignored in the international human rights discourse. Meanwhile, UN human rights instruments have been implemented in a selective way in States Parties. From Nairobi Forward Looking Strategies, to the Vienna Convention and Programme of Action, to Declaration of Elimination of Violence against Women, to Platform for Action in Beijing, an international standard against violence targeted at women has been established. Following the setting up of these international standards, States Parties are duty-bound to take legal, political, economic and cultural measures to eliminate violence against women. China, as a member of the UN, has been trying to apply UN declarations and conventions to its own policy-making and law-drafting approaches. In the following three chapters, I shall be demonstrating how the issue of domestic violence has been brought from the private domain to the public and how the Chinese government has attempted to meet the international standards in fighting against domestic violence.

Chapter 2

Women in China: a Historical Review

No social phenomenon exists in isolation, and independently of other norms. The phenomenon of domestic violence is closely linked with the ideology of family, relationships between family members and other relevant issues. The Chinese cultural legacy provides fertile ground for domestic violence to grow, therefore one cannot fully comprehend the persistence of violence against women in the family without observing the background which nurtures it. An understanding of Chinese society will deepen our knowledge and facilitate our interpretation of why and how wife abuse is so widespread and persistent in China. Hence this chapter provides a chronological survey of the political, economic and cultural aspects of Chinese society which have shaped the background of women in contemporary China. It begins with the cultural tradition in old China, then moves on to the great changes that took place when the Communist Party came into power, and culminates in an investigation of the economic reform era. Focusing on the status of women at present, this chapter demonstrates the link between economic reform, the prevalence of domestic violence and women's self-consciousness raising.

2.1 Chinese Families and Cultural Tradition

Home to one of the earliest civilisations in the world, China has a long and rich cultural tradition. The core of this tradition is centred on the family, which is considered the core of the social structure and a definitive factor in Chinese

culture and personality.¹ Therefore the family plays many roles as a productive, procreative, supportive, educational, protective, recreational, political and religious unit.²

There are many sayings in the Chinese language that illustrate the importance of family to the Chinese, such as "protect the family for the sake of the nation" (*bao jia wei guo*). To Chinese people, the nation is considered a big family to which each individual has a responsibility to contribute his/her share. Meanwhile the stability and good order of each individual family will safeguard the good order of the nation. This is the relationship between the macro-family (the nation) and micro-family (individual family) in Chinese philosophy.

China's feudal past spreads over several thousand years. The feudal society was characterised by its hierarchy, where inferiors had to obey superiors unconditionally, otherwise severe punishments would follow. In feudal times, both men and women were subjected to the rigid codes of patriarchal hierarchy, which was perpetuated through the propagation of two cardinal principles: namely loyalty (*zhong*) and filial piety (*xiao*). Loyalty in the sense of being, "faithful and obedient to the king, the ruler", was very much emphasised by leaders throughout Chinese history in order to safeguard their authority. It was regarded as the principle to guide social relationships. Filial piety (*xiao*) is another cardinal principle to guide family relationships. As an idea differentiating the family status of parents and sons, filial piety became a major

¹ Liu, C. C. (1986) "Modernization of Chinese Society and the Change of Family", paper presented at the Seminar on Ideological and Cultural Issues in China's Modernization, Hong Kong.

² Xu, Z. & Lin, W. Y. (1987) *Contemporary Social Work*, Taipei: Wunan Publishing Co., p. 33.

means to uphold the social hierarchy in the traditional Chinese society³. *Xiao* "was instilled among children to foster the desirable attitudes toward their parents and other family members of elder generations. This in turn ensured the material and emotional supports from offspring to parents and other seniors in their old age"⁴. As the family was the basis of the social structure in traditional China, *Xiao* played a vital role in maintaining patriarchal order in the family.

As the family unit was considered the foundation cell that shaped society, specific principles sustaining a hierarchy within the family were formed and implemented. "*San Gang Wu Chang*" summarised the core of the principle. "*San Gang*" illustrates the submissive relationship of subjects to the King, sons to parents, and wives to husbands. According to "*San Gang*", subjects must obey the King unconditionally, in the same manner as sons obeyed their parents, and wives their husbands.⁵

Of the five cardinal human relations (*wu lun*) in traditional Chinese culture (ruler-subject, father-son, husband-wife, older brother-younger brother, friends), three pertained to relations within the family. Rules of proper conduct were decreed accordingly such as, "affection between father and son; righteous conduct between ruler and subject; distinction between husband and wife; proper order between old and young; and trust between friends" (*Mencius*).⁶

³ Chen, S. Y. (1996) *Social Policy of the Economic State and Community Care in Chinese Culture*, Aldershot: Avebury, p. 60.

⁴ *Ibid.*, p. 59.

⁵ *Ibid.*, p. 60.

⁶ Wong, L. (1998) *Marginalization and Social Welfare in China*, London: Routledge, p. 26.

Although China has ended its feudal system, the cultural bond originating from the feudalistic society cannot be clearly cut. Many traditional ideas have remained and still function effectively.

2.2 Women's Status in Old China

Within the familial hierarchy, women were categorised as the lowest status group. Traditionally, a clan was a family with the same surname. The clan sometimes consisted of twenty families and several hundred people. In the big family, the clan elder (the oldest men in the clan) was in charge. He had the power to punish anyone who acted against the clan rules, including conferring death sentences. Families would submit to his authority. In each family, the eldest man (grandfather or great grandfather of the family) was in control and in charge of the women in the family; He had the authority to regulate all aspects of 'his' women's lives. The status of women was vividly described by Mao Zedong⁷ when he declared that "[m]en were dominated by three systems of authority — the political, the clan, and the religious, while women were dominated by these and one additional system of authority — the authority of the husband."⁸

In addition to the hierarchy of power, there were written rules for women to obey. "*San Cong Si De*", the principle governing women's behaviour illustrates women's submissive status. According to this code of conduct,

⁷ Mao Zedong is the first chairman of the People's Republic of China.

⁸ These four kinds of authority served as "the four thick ropes binding Chinese people, particularly the peasants." Mao Zedong (1975) "Report on an Investigation of the Peasant Movement in Hunan" in *Selected Works of Mao Tse-Tung*.

women were required to obey their father before marriage, obey their husband after marriage, and obey their sons if the husband died (*San Cong*, literally means three obediences)⁹. "*Si De*-- four virtues"¹⁰ is the virtue of women, the speech of women, appearance of women, and responsibility of women. The virtue of women requires women to be loyal to their husbands, to be quiet and to behave properly. Their speech should fulfil expectations in terms of decorum and propriety and must be devoid of offensive language. Furthermore, women must be tidy in their appearance and dress beautifully. In the home, women were expected to weave, cook, and prepare suitable food to serve guests and behave elegantly in their presence.

Polygamy, another indicator of women's subordinate position in the family, was legalised in China's feudal society. The number of concubines was dependent upon the status of the man: the higher his social status, the more concubines he was allowed. An emperor for example, would normally have 72 concubines.¹¹

Furthermore, women's low status in the old society (before 1949) was reflected in their names. A girl tended not to have a formal name but a nickname, and was obviously considered to be inferior to her brothers. When a girl grew up and got married, her name consisted of her husband's surname, her surname (which came from her father) and the suffix "*shi*" which literally

⁹ Xia, Z. N. (2000) *Ci Hai*, Shanghai: Shanghai Dictionary Publishing House, p. 25.

¹⁰ *Ibid.*, p. 23.

¹¹ This was the general practice of Chinese emperors.

means "a woman".¹² A woman possessed no individual identity. She did not exist as a person, but rather as the daughter of her father, the wife of her husband and the mother of her son. In other words, she existed as a dependant on one or several males.

Moreover, female was considered the inferior gender in old China. It was considered shameful for a family to have only female children.¹³ In fact, among the three kinds of deeds which were considered to go against filial piety, having no male children ranked as the top offence (*bu xiao you san, wu hou wei da*).¹⁴ When a girl was born, it was not an occasion for celebration in a family as parents took the view that she would be given away in marriage as "the water poured out."¹⁵ She would contribute to another family instead of her natal family "when she was becoming most useful, her upbringing was an expense that could not be recouped"¹⁶. In addition to this, daughters were considered incapable of providing for their parents in old age. Proverbs in Chinese culture such as 'Men rear sons to provide for old age; they plant trees because they want shade', and 'Men rear sons to provide for old age, they store up grain to provide for years of famine' illustrate people's strong preference for sons. A rural folk song warns that "Even a worthless son can give his mother three hot

¹² This was common practice in Chinese culture. It was very rare for girls to have a formal name before the founding of PRC. The first marriage law granted women rights to have their own names and maintain their names after marriage. Since then, women started to get formal names.

¹³ This is a deep-rooted cultural legacy in China. Even today, the majority of people still prefer boys to girls.

¹⁴ This is also a commonly known saying in China. Before the founding of PRC, a man could divorce his wife straight away because she was unable to bear children, or marry another woman as his second wife.

¹⁵ There is an old saying "A married daughter is like water spilling out of a bucket" Esther S. Lee Yao (1983) *Chinese Women: Past and Present*, pp. 54-58.

¹⁶ Davin, D. (1976) *Woman Work*, Oxford University Press, p. 71.

meals a day, but a filial daughter can only give her one that has cooled while shaking along the road"¹⁷ and further illustrates this point.

Once a girl reached the age of marriage, she had no choice but to marry a man her parents arranged for her.¹⁸ After the marriage, she had the responsibility to take care of her husband and all household chores. Meanwhile, she needed to fulfil the task of giving birth to children, especially male children to carry on the line of her husband's family.¹⁹ She was required to obey her husband unconditionally according to the principle of "*San Cong*".²⁰

In matrimony, men had absolute authority over women who had no rights to request divorce. In fact, in traditional Chinese society, men were entitled to file for divorce based on the following seven conditions: failure to bear sons, adultery, lack of respect for parents-in-law, excessive gossiping, stealing, jealousy or disease.²¹ As wife, a woman was expected to comply with the demands of her husband and his family. It was a matter of shame for a woman to be divorced and sent back to her natal family. Many women preferred committing suicide rather than going back.²²

Another classical Chinese gospel *Si Shu* (written by Confucius) confined women to the home. Confucius defined that the proper role for women was in

¹⁷ These are popular Chinese sayings.

¹⁸ Before the founding of PRC, arranged marriage was the only way for young people to get married.

¹⁹ Davin, op. cit., n. 16, at pp. 72-76.

²⁰ "*San Cong*" was the guideline for women to obey before the founding of PRC. Only those who strictly followed the guidelines were considered to be virtuous women.

²¹ Ta, C. (1937) *History of the Livelihood of Chinese Women*, Shanghai, Commercial Press, p. 131.

²² The plight of such women is depicted by many writers in Contemporary Chinese literature.

the home and that of men was outside of the home.²³ In fact, this argument serves merely to promote the idea that men are born superior to women and to assert that women's activities must be restricted in order to strengthen their inferiority. As Elisabeth Croll maintains in her book *Feminism & Socialism in China*, "[W]ithin the domestic sphere, men were the institutionalised source of all authority and women had no public, social, political or economic position or role with which to negotiate and improve their position within the family."²⁴

Therefore women had no bargaining power within the family. Incidents of physical abuse by the husbands were common practice. A popular proverb "A wife married is like a pony bought; I will ride her and whip her as I like"²⁵ vividly described the miserable situation millions of Chinese women had to face. In fact, it was considered the right of a husband to correct his wife, and in extreme cases he could kill her. During the *Han* dynasty, the emperor *Han WuDi's* concubine gave birth to a son whom he loved and intended to pass his empire to him. However, he was afraid that when his son became emperor, his young mother would interfere in his authority, therefore he killed the concubine.²⁶ During the long period of feudal rule, many tragedies befell families, both rich and poor, royal and ordinary. Suicide or attempted suicide was the only way for a woman to show her anger towards her abusive husband and his family. Such actions would sometimes bring an official investigation,

²³ Li, Y. N. (1992) *Chinese Women Through Chinese Eyes*, Armonk: New York, p. 114.

²⁴ Croll, E. (1978) *Feminism and Socialism in China*, London: Routledge & Kegan Paul, p. 32.

²⁵ *Ibid.*, p. 32.

²⁶ Liu, op. cit., n. 26, at p. 43.

the disapproval of the community, or the hostility of her natal family.²⁷ However the result was hardly satisfactory, because it was considered as a family matter. Traditional Chinese family values and cultural legacy conspired to uphold the patriarchal society in which women were placed at the bottom.

2.3 Contemporary China

After 1911, and as a result of the *Xin Hai* Revolution, China ended its feudal social system. New ideas from European countries spread to China. Reformers conducted campaigns to promote equal rights for men and women and endorsed women's participation in public and political affairs. There were certain changes to women's subordinate position, e.g. women had more chance to attend schools, whilst educated women demanded the right to choose their future husbands by themselves. Although certain aspects of feudal society had changed, domestic violence remained, and incidents of serious physical abuse against women were frequent. One case vividly illustrates the real situation of abused women at this time. In the early 1930s, a divisional commander of *Guo Min Dang* called *Zhang Lingpu*, a famous fighter in the army, who was married to several women, shot his third wife with a gun.²⁸ The murder came as a result of a joke made by his colleague, accusing his wife of having an affair with another man. *Zhang* left his deceased wife in their back garden and went back

²⁷ Lang, O. (1968) *Chinese Family and Society*, Archon Books, pp. 40-41. Wolf, M. "Women and Suicide in China" in Witke, R. & Wolf, M. (ed.) (1975) *Women in Chinese Society*, Stanford: Stanford University Press, pp. 111-141.

²⁸ Liu, D. L. (2000) *20th Century Sexual Behavior in China*, Shanghai: San Lian Publishing House, p. 43.

to his army barracks immediately. The news aroused great anger in the local area. Women wrote letters to the minister of women, appealing for the punishment of the killer. Consequently, *Zhang* was dismissed from office. This brought the case to an end. Society showed some progress in the fact that women started to get together and appealed for justice. However, they had not won the anti-domestic violence campaign because the perpetrator was not punished. After all, little changes had occurred to the status of abused women at home. The famous Chinese saying "Noodles are not rice and women are not human beings"²⁹ vividly depicts the status of women before 1949 when the Chinese Communist Party came into power.

2.4 Position of Women in PRC

In 1949, the Chinese Communist Party came into power. The newly established government adopted a series of policies and established programs aimed at redefining the position of women and placing them on a par with men in public as well as in domestic spheres. These efforts can be categorised into four areas, namely "legislate for equality, introduce women into social production, introduce a new ideology of equality and organise women to both redefine and forward their economic, social and political interests."³⁰

The Chinese government sought legal measures to end female subordination and granted women equal rights with men in its new legal codes. The marriage law of 1950 was of great significance to Chinese women, because

²⁹ This is a famous Chinese saying that everybody in Chinese culture knows.

³⁰ Croll, E. (1983) *Chinese Women Since Mao*, London: Zed Books Ltd, p. 1.

it "outlawed most of the extreme forms of abuse and legally reduced the power of the males of the family and kin groups to control the movement of women in marriage and divorce. The law had also given women access to land and equal rights to participate in the waged labour force and in political institutions."³¹

This was the most dramatic and effective step taken by the Chinese government to liberate women.

Adhering to the theory of Marx and Engels, the Chinese government believed that entry into the waged labour force was the essential path that led to women's complete liberation. Therefore, the new government strongly encouraged women to participate in production and in all kinds of social reform movements. Work was considered as the major means for women to be freed from the bondage of feudalism. Due to governmental policy, an increasing proportion of women entered full-time employment and a majority of them were involved in paid jobs in state enterprises, rural co-operatives and urban neighbourhood workers' co-operatives. In 1950, women only comprised 7% of the total workforce, and since then the highest growth rates of female employment have been in education, health care and the service industries.³² Among this new labour force, numerous women had entered occupations that had belonged only to males in the past. As more and more women were actively involved in productive work and various social and political activities, their consciousness and abilities had been enhanced.³³

³¹ *Ibid.*, p. 1.

³² Tomala, K. "The Position of Women in Chinese Society", in Sha, J. C. & Liu, Q. M. (ed.) (1995) *Women's Status in Contemporary China*, Peking University Press, p. 33.

³³ Croll, E. (1974) *The Women's Movement in China*, Nottingham: Russell Press Limited, p. 32.

Meanwhile the Chinese government endeavoured to establish a new ideology of equality, as it realised that it was easier to change women's material conditions than it was to change customs and habits that subordinate women to men. Indeed the massive entry into social production did not bring changes to women as anticipated. Feudalistic ideology hindered women's attempts at achieving equality in society. The government made great efforts to establish a new ruling ideology redefining women's role in the society as well as in families, while feudalistic ideas were criticised in order to end the subordination of women and terminate the supremacy of men. As will be discussed in Chapter 3, Marriage law played an important educational role in the years that followed. Education was not only directed to those who violated the law, but also to the general public through the illustration of particular cases. The aim of doing so was not meant to prevent the masses from committing certain acts, but to bring about a change of attitude through such education programs.³⁴

From 1949 to 1979, both women's social and familial status had seen changes. More participation in paid labour, social and political activities enabled them to walk out of the confining world of the family. In general, they enjoyed a higher status at home, such as having more power in family decision making and educating children. Despite many changes, however, wife beating survived.

³⁴ For detailed analyses, see Meijer, M. J. (1971) *Marriage Law and Policy in the Chinese People's Republic*, Hong Kong: Hong Kong University press, chapter five.

2.5 Losing Power in Economic Reform

The Third Plenum of the 11th Central Committee to the Chinese Communist Party held in 1978 marked the turning point in China's development model.³⁵ Economic goals are primarily compared with the previous political development model.

While the policy of economic reform stimulated the rapid growth of the economy and a significant improvement of people's living standards, the reform period has remained an 'anomalous age' for women in terms of their political participation, economic involvement and cultural representation. On the one hand, the number of high-ranking female officials is increasing, while on the other hand the overall political participation of women shows a tendency towards decline. In the area of economic participation, statistics show that the proportions of women entrepreneurs doubled, from 10% in the 1980s to 20% in the 1990s, while the main body of the unemployed consists mainly of women.³⁶

2.5.1 Less Participation in Political Arenas

Statistics show that the proportion of women cadres (administrators) decreased sharply during the reform period since the early 1980s. "In the 1950s, 70 % of

³⁵ Afshar, H. (1991) *Women, Development & Survival in the Third World*, London: Routledge, p. 42.

³⁶ In a report from Xinhua News Agency entitled "Chinese Women Entrepreneurs is on the Increase", the author (Han, J. & Ren, F.) quoted statistics from the All China Women's Federation. One-third of these women was aged between 30 to 40 years old, and half of them were between 40 to 50. These statistics show that the majority of female entrepreneurs started their business in the eighties and nineties after the country adopted the economic reform policy. *People's Daily* (overseas edition), July 4, 2002.

the villages in rural China had at least one woman head or director, while in the 1990s only 10% of the villages throughout the country had a woman as the head of an organisation³⁷. In 1993, women accounted for only about 3.8 % of the country's township administrators, 5.9 % of the county heads and 5.8 % of the municipal responsible managers.³⁸ It is the same at the top level. "Female membership of the Central Committee peaked in 1973 at 10.3 %, by 1992 it was down to 7.5 %. While women formed 25 % of the members of the Standing Committee of the National People's Congress of 1975, they made up only 9% of the Standing Committee in 1993."³⁹

This phenomenon is the direct result of the reform. Under the political development model before the economic reform, women's political participation was considered an integral component of the overall political development of China. Therefore, the state paved the way for women to enter into its local leadership structure. It was considered praiseworthy for women to take some time away from family responsibilities to engage with the voluntary responsibilities of a party member or a low-level street committee member.⁴⁰ The strong state input, such as the quota system to make sure that there were certain numbers of female cadres in all levels of leadership, brought about not only a high ratio of women's political participation, but also women dependence

³⁷ Huang, Q. Z. "Pay Attention to Women's Political Participation" (1992) 1 *Women Work* 9. (in Chinese).

³⁸ Tao, C. F. & Sun, Y. L. & Qiu, C. Q. (1993) *Introduction to Women's Political Participation*, Beijing: Red Flag Press, p. 101. (in Chinese)

³⁹ Afshar, H. (1996) *Women and Politics in The Third World*, London: Routledge, p. 96.

⁴⁰ *Ibid.*

on the state for support and legitimacy.⁴¹ When the development model changed to an economic model, with the retreat of the state from society, women "had to face up to society and engage in self-reliant competition for their political participation without the support of the state".⁴²

In 1987, the competitive election mechanism was introduced, and the percentages of women cadres in most provinces and cities decreased dramatically. "The proportion of women members of Standing Committee of the first session of the Sixth NPC (National People's Congress) dropped from 21% to 9%. In October 1987, the First Plenary Session of the Thirteenth Central Committee of CPC elected the new leading organs of CPC. There were no women members in the Central Political Bureau; 10 women of 175 members in the Central Congress, accounting for 5.7%, less than 9.4% in the Twelfth Central Committee of CPC; no women in the Central Secretariat, the Central Consultative Committee and the Central Commission for Discipline Inspection. In March 1988, the first session of the Seventh NPC elected the new leading organs of state and government. There were no women in all of president and vice presidents of state, premier and vice premier of government and state councillors; In fact, out of 42 ministers there were only 2 women. Of the 120 responsible members of all provinces elected immediately after the Seventh NPC, there were only 3 women."⁴³ The figures show that women's political

⁴¹ Wang, Q. "State-society Relations and Women's Political Participation" in West, J. (ed.), (1999) *Women of China — Economic and Social Transformation*, Macmillan Press Ltd., p. 20.

⁴² *Ibid.*, p. 20.

⁴³ The Center for Women's Law Studies and Legal Services of Peking University (ed.) (2001) *Theory and Practice of Protection of Women's Rights and Interests in Contemporary China*, Beijing: Worker's Publishing House of China, pp. 11-12.

participation faced severe challenges during the reform years. Lack of political participation means lack of voices and lack of power. In a period of redistribution of wealth and power in a country, lack of decision making power directly leads to the inferior economic and political position of women.

In February 1995, the All China Women's Federation held a symposium to draft the 1995-2000 working plan for training women cadres. The target was to "promote one woman cadre in leading groups at provincial and city level by the year 2003".⁴⁴ In April 2001, the Ministry of Organisation held a conference on the same issue. The target was to "allocate at least one woman cadre to work for the party committee, people's congress, government and the Chinese People's Political Consultative Conference (CPPCC) at provincial and city level. Fifty percent of the leading groups in the central government and administrative bodies should allocate women cadres. Leading groups at provincial, district and county levels must maintain the ratio of 10%, 15% and 20% for women cadres."⁴⁵

Despite state efforts, women's political participation in China remains far from satisfactory. The proportion of women representatives in people's congresses, the highest governing bodies in China, remains low. The proportion of women representatives in the Eighth NPC and the Ninth was 21.3% and 21.8% respectively, far less than the 30% goal set in the Platform of Action adopted by the Fourth World Conference on Women.⁴⁶ Women's political

⁴⁴ All China Women's Federation (ed.), (2001) *Working Handbook for Women's Federations*, Beijing: Chinese Women's Publishing House, (in Chinese), p. 94.

⁴⁵ *Ibid.*, p. 95.

⁴⁶ *Op.cit.*, n. 43, at p. 17.

participation has the characteristics of "four lows", namely low proportion, low levels, low decision-making power, and low election rate;⁴⁷ it remains at low levels, and engulfed by the power of hierarchy. Women normally assist their male bosses as deputies, and they are usually appointed rather than elected.

Inadequate political representation of women hinders the channelling of women's voices to policy making bodies. In a fast developing country, state policy without a gender perspective leads to further exclusion of women from participation in the new development and deterioration of their status at home.

2.5.2 Lower Participation in Economic Activities

The economic reform started in rural areas by the end of the 1970s. The Household Responsibility System, a reorganisation of agriculture from communal to family-based farming, stimulated greater enthusiasm and production incentives from peasants, and production soared.⁴⁸ Encouraged by the great success of rural reform, the government outlined a plan for urban reforms in the Third Plenum of the 12th Central Committee in October 1984. The focus of urban reforms was to change three key relationships of state-owned enterprises: their relationship with the state, with employees, and with customers.⁴⁹ Prior to the reforms, enterprises were totally dependent on the state for major matters such as goal setting, making up losses, and recruiting staff. Therefore, enterprises had no incentives to maximise profits or minimise

⁴⁷ *Ibid.*, pp. 17-18.

⁴⁸ Summerfield, G. "Chinese Women and the Post-Mao Economic Reforms" in Pressman, S. & Aslanbeigui, N. (ed.) (1994) *Women in the Age of Economic Transformation*, Routledge Publishing House, p. 116.

⁴⁹ Starr, J. B. (1997) *Understanding China*, London: Profile Books Ltd, p. 137.

losses. After the reforms, managers became responsible for planning, supply, production, and marketing, for appointing supervisory personnel and recruiting workers, for determining wages and rewards, and for setting prices on their products. Meanwhile they were told to trim the bloated workforce and increase productivity.⁵⁰ The employment pattern also changed gradually from the allocation system to the contract employment system. This change has had a negative impact on women's employment, because they are more likely to be made redundant in the reform of enterprises. Certain groups of Chinese women are increasingly marginalised economically.

When China started its urban reform, one third of its one hundred thousand state-owned industrial enterprises were running at a loss.⁵¹ In 1988, more than 60 % of them were unable to survive without the aid of government subsidies.⁵² The government had to allocate \$50 billion to help them out in 1994.⁵³ Several measures have been taken to release these enterprises from heavy losses. One solution, popular in 1990s, was reorganisation through merger, which consisted in combining a profitable enterprise with an unprofitable one. Another was to declare the bankruptcy of the worst-off enterprises. These two measures resulted in large numbers of surplus workers, among which women were the most seriously affected. Women have become the first to be fired and the last to be hired in enterprises engaged in merger,

⁵⁰ *Ibid.*

⁵¹ Tyler, P.E., "Overhaul of China's State Industry at a Standstill", *New York Times*, Dec. 16, 1994.

⁵² Central Intelligence Agency, publication No. EA93-10016, China's Economy in 1992 and 1993, "Grappling with the Risks of Rapid Growth", p. 25.

⁵³ Starr, *op. cit.*, n. 49, at p. 140.

bankruptcy, or streamlining of staff. Data from the national statistics bureau showed that the total number of unemployed was 5.6 million in 1995. By the end of 1996, the figure had reached 8.14 million,⁵⁴ and by the end of 1997, the figure of laid off workers from state-owned enterprises who still remained idle was 6.34 million.⁵⁵ In 1998 and 1999, the number of registered unemployed was reported as 5.71 million and 5.75 million.⁵⁶ The registered unemployment rate in China is 3.1% in the years 1997, 1998, and 1999.⁵⁷ More than 60% of the 'surplus workers' were women whilst female workers constituted 40% of the total labour force.⁵⁸ Compared with men, the figure of unemployed women was much higher. This illustrates the fact that large numbers of women lost their economic status in the reform.

The second national investigation on the status of women in China shows that by the end of 2000, the percentage of employed women between the age of 18 and 64 was 87%, 6.6% less than men.⁵⁹ Compared with the figure in 1990, the employment rate of both women and men was lower, but especially the unemployment rate for women. The investigation shows that more women become unemployed and become economically dependent on their husbands. This investigation also shows that among laid-off women workers from state-

⁵⁴ Yao, Y.Q. "Face the Reality, Solve the Problem--- An Analysis of the Present Situation of the Unemployed in China", *China Labour* (newspaper), Nov. 11, 1997.

⁵⁵ He, J. S. "China's Labour Market", *People's Daily* (overseas edition), June 15, 1998.

⁵⁶ The website of the National Statistics Bureau of PRC.

www.stats.gov.cn/tjfx/ztfx/xzgwsnxlfxbg/index.htm.

⁵⁷ *Ibid.*

⁵⁸ Chen, F. "Unemployment & Re-employment", *Chinese Women* (magazine), August 8, 1997.

⁵⁹ "Statistical Report on the Second Round of Poll on the Social Status of Chinese Women", *Chinese Women*, Sept. 11, 2001.

owned enterprises, 49.7% of them hold the view that it is very difficult for them to be re-employed due to age and sex.⁶⁰

The Ministry of Labour and Social Security released the following figures in a news briefing in March, 2002.⁶¹ By the end of March 2002, there were 4.899 million laid off workers from state-owned enterprises. About 4.308 million have been registered with local re-employment centres. About 4.248 million have signed contracts of re-employment and basic living guarantee. By the end of June 2002, there were 4.12 million laid off workers from state-owned enterprises, 89% of them have been registered with re-employment centres. The re-employment rate is 9.1%.⁶² It is estimated that 60% of the unemployed are women. The low re-employment rate indicates that more women still remain unemployed.

Married women, especially women with young children, are particularly vulnerable to dismissal, because employers do not want to pay the high costs of providing benefits and child care services required by relevant laws. The relevant laws grant women legal rights in the work place, especially during four special period of time in their lives, namely menstrual periods, pregnancy, obstetrical and nursing period. For instance, women are entitled to 3 to 6 months paid maternity leave, one hour paid breast-feeding time daily for feeding mothers, paid medical check leave for pregnant women.⁶³ Working

⁶⁰ *Ibid.*

⁶¹ <http://news.xinhuanet.com>. April 30, 2002.

⁶² Yie, Z. "The Re-employment Rate Reaches 9% in the First Half Year", *People's Daily* (Overseas Edition), July 27, 2002, front page.

⁶³ Regulations Governing Labour Protection for Female Staff and Workers (1988) Article 7.8.9.

mothers used to get support from work units by benefiting from complete care for their children during working hours. With the elimination of government subsidies, nurseries attached to work units were abolished gradually to reduce costs.⁶⁴ Women who still bear the responsibility of housekeeping and reproduction experience more difficulties and discriminations from employers. Some employers even force women to sign contracts promising not to get pregnant for a certain period of time.⁶⁵

Women workers over forty are often made redundant or forced to retire earlier than the legal retirement age of 55.⁶⁶ A survey of about 400 enterprises in Shanghai in 1989 indicated that 6% of women employees were forced to stay at home when the enterprises had surplus workers or were not in full production.⁶⁷ Some enterprises even force all women employees over the age of 45 to return home.⁶⁸

Employers are not willing to hire women, or create obstacles for female candidates by raising entry requirements, because women are considered less efficient due to heavy family responsibilities. One national investigation shows that in 85% of families, wives are responsible for family chores. They spend an average of 4.01 hours daily doing housework.⁶⁹ Statistics from the All-China Federation of Trade Unions indicated that among 660 factories with 15,000

⁶⁴ Weil, R. "China at the Brink: Class Contradictions of Market Socialism Part 2"(1995) 1 *Monthly Review* 11.

⁶⁵ WuDunn, S. "Profit and Loss: China's Affection for Capitalism Erodes Gains in Equal Rights"(1992) 9 *Chicago Tribunal* 5.

⁶⁶ Croll, E. (1995) *Changing Identities of Chinese Women*, Hong Kong University Press, p. 120.

⁶⁷ *Ibid.*, p. 121.

⁶⁸ *Liberation Daily*, Nov. 20, 1989.

⁶⁹ *Op. cit.*, n. 59.

workers, only 5.3% of the employers expressed their willingness to employ women in positions that could be filled by either women or men.⁷⁰ Of the 660 financial enterprises and 77 commercial enterprises, women applicants were required to gain 12 or 13 points more in entrance exams, despite professed equality statements in the relevant employment laws.⁷¹

Furthermore, women have had to face the reality that employers tend to favour recruiting young and attractive women for making full use of their beauty and energy. One advertisement, for example, required applicants to be between 18 and 25 for a waitress job.⁷² Some factories and joint ventures only employ women between the age of 18 and 22 in order to gain maximum profits. When these women get married or get pregnant, they are fired.

In summary, it is possible to conclude that as a result of market forces, women are viewed as more expensive workers and are highly disadvantaged in the competition for employment. With the change of employment patterns and the reduction of government support, most women are not receiving their share of the benefits from China's new economic policies.⁷³ Consequently, as they become economically inferior to their husbands, many women experience increasing incidents of violence at home. This will be analysed in chapters 6, 7, and 8.

⁷⁰ Croll, op. cit., n. 66, at p. 120.

⁷¹ *China Daily*, June 24, 1992.

⁷² Lin, J. "Women Suffering High Unemployment in China" (1998) 3 *News and Observer* 6.

⁷³ Han, A. M. "Holding Up More Than Half the Sky--- Marketization and the Status of Women in China" in Wing, A. K. (2000) *Global Critical Race Feminism*, New York and London: New York University Press, p. 403.

2.5.3 Changed Cultural Representation

Since 1949, the government's policy towards gender relations has been to advocate equality between women and men. In her article "Female Images and National Myth", Meng Yue summarised the debate over equality:

Equality meant that male and female were substantially the same. Under socialism there emerged, in other words, a concept of sameness, or the nondifference of the two sexes. This notion-- and it can only be understood as a distortion of the notion of the equality-- lodged itself in the socialist state and was embedded in a range of policy formulations. Nondifference, combined with the unshaken power of the male discursive tradition, produced a vague and paradoxical literary line on gender issues.⁷⁴

The idea of equality reached its peak during the Cultural Revolution, as there had been an explicit rejection of the attacks on the sexual division of labour, which was part of the policy on women. It was considered a sign of equality for women to dress like men. Although it seemed ridiculous to deny differences between men and women, it reflected the government's strong support for women to gain equality.

When the Chinese government adopted the economic reform policy after 1978, China gradually abolished its former emphasis on political development and changed to the present economic development model. This shift in emphasis has resulted in a steadily rising gross national product per capita and regularly improving living standards. The rhetoric about women has also undergone great changes, especially when the former equality approach

⁷⁴ Barlow, T. E. (1993) *Gender Politics in Modern China*, Durham and London: University Press, pp. 118-119.

was replaced by a gender-centred approach, whereby women's feminine character has been very much emphasised.

The market economy has brought about richness of products. The process of advertising and selling these products is accompanied by the commodification of women's image and bodies. Beautiful faces and elegant figures appear in the media to promote kitchen necessities and other domestic essentials, which at the same time promotes the deep-rooted ideology of the domestic role of women. Cosmetics, fashion, and beauty parlours convey the strong message that beauty is the most important quality for women, just as success and money are for men. Images of extravagant cars, luxurious houses, and lavish holidays, further sell the idea that women can only obtain a good life by being physically attractive and financially dependent on men. All these aspects of the mass media culture reflect the submission of gender policy to the economic goal of the country.

2.5.4 Increasing Violence Against Women

Jordan argues that the increasing violence against women in China is "a direct consequence of the way that opportunities for women's participation in the market economy are being channelled into 'feminine' labour or domesticity and the way that women's sexuality is being commodified."⁷⁵ The rapid economic development creates an environment in which women are increasingly vulnerable to violence.

⁷⁵ Jordan, A.D. "Human Rights, Violence Against Women, and Economic Development"(1996)
5 *The Columbia Journal of Gender and Law* 216.

With the thriving economy and large population flow, prostitution and pornography have become rampant in urban areas and numerous rackets dealing with the abduction, buying and selling of women have been exposed.⁷⁶ Women's bodies have become products to be consumed by men in the pornography industry. Unofficial estimates show that over 200,000 women are providing sex services in cities alone, excluding those in rural areas.⁷⁷ They are either from other regions or unemployed women. These women work in hair salons, massage houses, bath centres, restaurants, hotels and song halls. The majority of them come from rural areas. Statistical data cited by Xinhua News Agency show that about 18 million young women at the average age of 23 move to cities for jobs.⁷⁸ Due to the lack of education, 90 % of them have no choice but to work in the service sector (the majority of them only have a limited education of junior middle school level).⁷⁹ They are more likely to be involved in sex services. Within a period of eight months in 1989, an alarming 91.2% of sex workers arrested in Guangdong Province came from other provinces. About 85.9% of the women arrested over a five-year period in Shenzhen were unemployed or laid-off workers.⁸⁰ Sex services lurking in all dark corners of the society are threatening the stability of families and put married women in a vulnerable situation.

⁷⁶ Pearson, V. "Behind the Steel and Glass the Oldest Profession Flourishes"(1989) 130 *China Now* 18-19.

⁷⁷ Zhang, Z.P. "Does China Need a Red-light District?"(2000) 24 *Beijing Review* 28.

⁷⁸ *Ibid.*, p. 32.

⁷⁹ *Ibid.*, p. 32.

⁸⁰ Jordan, op. cit., n. 75.

Another by-product of the market economy is the trafficking of women. This barbarous crime surfaced in the late 1970s, occurred more frequently in the 1980s, and became more rampant in the 1990s.⁸¹ Abducted women are sold to strangers with a marked price as wives⁸² or else are forced to provide pornographic services. The market economy widens the income gap between the rich and the poor, while stimulating people's desire for money. Some criminals take the abduction and trade of women as their occupation to earn big profits. The sex imbalance between men and women (there are 20 million more males than females in 1996)⁸³ creates a demanding market. Men who are too poor to attract local women turn to the market to buy a woman at a very low price. The high profits and great demands for young women stimulate the abducting and trafficking activities not only for wives but also for commercial sex workers. The areas involved extended from remote rural and mountainous areas to cities, from several provinces to all provinces, autonomous regions and municipalities throughout the country. The number of cases has also increased. In 1991 and 1992, about 40,000 women and children were reported to be rescued by the police while in 1993 and 1994, around 15,000 and 26,982 women and children were abducted and sold.⁸⁴ In 1999, the registered cases

⁸¹ Li, R. X. "Cracking Down on the Abduction of Women and Children"(2000) 43 *Beijing Review* 14.

⁸² Chan, L. W., Liu, M. & Zhang, Y.L. "End of Women's Emancipation?" In Cheung, J. (1998) *China in the Post-Deng Era*, Hong Kong: Chinese University of Hong Kong Press.

⁸³ Zhang, op. cit., n. 77, at p. 32.

⁸⁴ "Trade in Woman Uncovered" (1994) 10 *E. Express* (Hong Kong) 7. "China Calls for Action against Slave Traders"(1995), *Reuters*, Mar. 31, 1995 quoting *Legal Daily*.

rose 11.4% from the previous year, with the number of abducted and traded women and children rising by 30.7% and 15.3% respectively.⁸⁵

Large proportions of trafficked women are raped by procurers immediately after the abduction to smash all their dreams and ensure their obedience. They are raped again by their purchasers to ensure total submission. Repeated rapes are critical tools used to dehumanise and subordinate women because the loss of their virginity signifies the loss of any prospect of leading a normal family life in Chinese society. They give themselves up as hopeless and follow their fate either as sex workers or purchased wives. These women seldom report their experiences to the police.

A new occupation named 'public relations ladies' or 'private secretaries' also emerged in the reform years. This occupation requires women to be young and beautiful. They are salaried company employees who are expected to assist their bosses in attracting clients and closing business deals. Many of them have double status as mistresses to their bosses and play dolls of business counterparts.⁸⁶ Their duties involve accompanying clients on eating, drinking, singing and dancing, and even sleeping with them.⁸⁷

Work-related sexual harassment has been on the increase in the reform years because male employers have decision-making power over female employees in matters of hiring and firing. Sexual harassment in China does not only include the use of offensive or sexually explicit language, or unwanted

⁸⁵ Li, *op. cit.*, n. 81, at p. 14.

⁸⁶ Jordan, *op. cit.*, n. 75.

⁸⁷ Liang, S. "Without Female Beauty Today Things Do Not Get Done — account of women's public relations on mainland" (1991) 9 *Open Magazine* (Hong Kong) 57.

physical contact by a man which might make a woman feel humiliated, but it also includes coerced sexual intercourse with business counterparts or men in power positions.⁸⁸ "Armed with the power of hire and fire, male managers are more likely to abuse their female staff and, according to the accounts of Chinese women, will probably get away with it."⁸⁹ Young women employees are often forced to accompany their bosses and male clients to karaoke bars or banquets, or other entertainment venues, and even sleep with them in order to close a business deal. A survey conducted in Beijing showed that 25% of women under 30 reported losing their virginity through these activities.⁹⁰ Another investigation found that 18% of Shenzhen Women "had been the objects of 'sexual actions,' particularly at work..."⁹¹

Other forms of violence against women, such as physical abuse of female workers in export-oriented factories, private and collective enterprises have increased dramatically.⁹² Rural and immigrant women workers often work ten or more hours a day under heavily polluted inhuman conditions. They are confined to the factory, being watched carefully, whilst eating, working and sleeping together in accordance with a strict timetable. If they are caught breaking the rules, they are subjected to verbal and physical punishment for violating regulations. In addition to loss of freedom, these women are victims

⁸⁸ Kohut, J. "Scandal of the Trading Couch", *South Morning Post*, Aug. 22, 1993, p. 11.

⁸⁹ "Boss's Bed Is Means to Escape Factory Floor", *South China Morning Post*, Mar. 18, 1993, p. 23.

⁹⁰ Kohut, op. cit., n. 88.

⁹¹ "Shenzhen Women Speak about Sexual Harassment", *China Women's News, Ming Bao*, Nov. 5, 1994.

⁹² There are many reports about this issue on newspapers and magazines.

of building collapses and factory fires as a result of working in dangerous and unsafe environments where doors are always locked and fire exits barred.⁹³

Furthermore, reported rape cases have increased during the economic reform area. There were 30,808 rape cases in 1981⁹⁴ and 49,829 in 1992⁹⁵, a 60% increase in eleven years. This figure is much lower than the actual figure, because it is universally acknowledged that rape cases are underreported due to the following reasons. Firstly, the requirement of a woman to be a virgin on her wedding night means that a majority of victims keep their rapes secret. Secondly, rapes conducted on trafficked women are not reported. And thirdly, rapes by relatives, friends and employers are unlikely to be reported, because women find it hard to speak against someone with whom she has a close relationship. In addition, women's families tend to make financial settlements with the rapists.⁹⁶

However, there are connections between the economic reform and the increased incidences of rape. The market-economy motivates men to move constantly without their families. This increases chances for transient men to commit rapes. More and more men move about, free from the watchful eyes of neighbourhood committees and the supervision of their work units; meanwhile more and more women move to cities and towns far away from their protective

⁹³ Billing, W. W. Y., et. al., "Rescuers in Race to Save Trapped Workers", *South China Morning Post*, June 5, 1994, p. 1. "Hospitals said 63 people, mostly women aged between 15 and 25, were injured in the tragedy (of a mainland factory collapse). Hughes, M. "Delta Pays a High Price for Fast Economic Growth, *South China Morning Post*, June 5, 1994, p. 2 "More than 80 people, mostly migrant women workers from China's impoverished interior, died in a blaze which swept through a toy factory..."

⁹⁴ 1987 *China Law Yearbook*, p. 604.

⁹⁵ *Ibid.*, p. 940.

⁹⁶ Jordan, op.cit., n. 75.

homes. Women are more likely to be attacked without the protection of neighbours and families. The male-female imbalance means that some men will not be able to marry, therefore their sexual desire cannot be satisfied in the normal way: "The increase may have more to do with how women are now portrayed as commodities and as inferior, feminised persons and the government's increased inability to closely supervise the population in the way that it did prior to reform."⁹⁷

Domestic violence cases have also been on the increase during the reform years. As women become increasingly marginalised economically as a result of losing their jobs and being relegated to the submissive role of housewives, their position at home deteriorates. Richters's research in Taiwanese villages shows that "where wife-beating used to be frequent and severe, as women increase their economic resources, redefine their gender roles, and no longer passively accept abuse, the level of gender violence in the family seems to be remaining constant or perhaps even to be dropping."⁹⁸ This attests to the close relationship between domestic violence and the economic situation of women. Campbell researched additional factors leading to domestic violence and discovered that in addition to economic dependence, the lack of decision-making power, the absence of "female solidarity groups", and the non-existence of sanctions for wife-abuse, all contribute to family violence:⁹⁹

⁹⁷ *Ibid.*

⁹⁸ Richters, J. A. (1994) 150 *Women, Culture and Violence: A Development, Health and Human Rights* 102.

⁹⁹ Campbell, J. C. "Wife-battering: Cultural Contexts Versus Western Social Sciences" in Counts, D. A. (1992) *Sanctions & Sanctuary: Cultural Perspectives on the Beating of Wives*, p. 229.

"Thus, women with limited or no economic resources who are restricted by socially-constructed sexual stereotypes and forced to be passive are more likely to suffer from physical abuse in the home."¹⁰⁰ In the economic reform era, large numbers of women have lost their stable jobs in state-owned or collectively-owned enterprises, and the benefits and supports from their former work units. Being economically dependent on their husbands and losing former assistance and support, this group of women is more likely to become victim of abuse by their husbands.

In 1990, the survey of the women's studies institute of the All-China Women's Federation conducted in 21 provinces and cities revealed that 0.9% of women were often battered by their husbands; 8.2% of women were battered from time to time by their husbands; and 20.1% of women were occasionally battered by their husbands.¹⁰¹ In 1994, a survey conducted in eight districts by the Beijing Marriage and Family Research Department shows that 0.99% of wives were often battered by their husbands, 4.39% were battered from time to time and 15.92% were battered occasionally by their husbands.¹⁰²

In October 2000, the Beijing *Minyi* Investigation Department launched an investigation into the current situation of violence against women in the country's 31 provinces, cities and autonomous regions. The investigation

¹⁰⁰ Jordan, op. cit., n. 75.

¹⁰¹ The Maple Women's Psychological Counseling Center (ed.,) *Domestic Violence in China: Research, Intervention and Prevention Sub-program, Cases by Women's Hotline on Domestic Violence Research Report*, Beijing: April 20, 2001, p. 21.

¹⁰² *Ibid.*

revealed that among the 3,000 survey papers distributed, 13.7% of women experienced abuse, and 64.9% of women suffered verbal abuse.¹⁰³

As women are marginalised politically, economically and culturally, their status at home is lowered. Statistics show that the income gap between men and women has widened in the past ten years. In 1999, the average annual income of employed women in towns and cities was 7409.7 yuan, 70.1% of men's annual income. The income gap increased 7.4% compared with the figure in 1990. The income gap between men and women working in farmland, forestry, husbandry and fishery was 19.4%, even wider than in other occupations.¹⁰⁴

In summary, during the reform years, with the change of the development model, a series of changes in political, economic, and cultural areas have occurred which have had a significant impact the status of Chinese women. The concept of women has also undergone changes. These changes can be seen as a double-edged sword. On the one hand, the booming economy provides women with more opportunities. On the other hand, some women are pushed into a vulnerable position as their rights in society as well as in families are infringed.

Conclusion

In this chapter, we have reviewed the political, economic, and cultural background of Chinese women before and after the Chinese Communist Party

¹⁰³ Zhang, K. "How Far Domestic Violence Away From You?", *Chinese Women*, Nov.18, 2000.

¹⁰⁴ Op.cit., n.59.

came into power in 1949, with an emphasis on the reform years. The frequent occurrence of violence against women in recent years is closely related to the changes in the three areas of women's life due to China's economic reform process. By reviewing women's position at home in ancient, contemporary and modern China, we observe that domestic violence exists in all forms of societies. As a matter of fact, little has changed thus far in the area to bring about a significant improvement in reducing domestic violence incidents. Although causes of domestic violence may vary from time to time, the phenomenon of domestic violence does not change much. Patriarchy never changes either. As I have already illustrated in this chapter, the new economic policies have adversely affected women. In the next chapter, I am going to analyse the impact of marriage laws on women's life and how anti-domestic violence articles be added to the 2001 marriage law as one of the government's efforts to keep up with the international anti-domestic violence discourse.

Chapter 3

Marriage Law and its Impact on Women

As a member of the United Nations, China attempts to embody its spirit and conforms to some of the substantive provisions of major human rights instruments affecting women. Since China adopted its economic reform policy in the late 1970s, the country has speeded up its pace to join in the international legal framework by signing 18 international human rights conventions from 1980 to 2001.¹ China signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in July 1980, and in the same year it passed the 1980 Marriage Law, which promotes the principle of equality between men and women in political, economical, social, cultural and public affairs. China also signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in October 1998 and October 1997 respectively.²

Since the focus of this study is women's position within the family and the legal protection afforded to them by law and institutions, I will evaluate the various provisions in the three marriage laws dealing with domestic violence. By analysing these marriage laws, this chapter highlights the gap between formal pronouncements of the Chinese government for the protection of

¹ "The Development of China's Human Rights Discourse in 2000", *Legal Daily*, April 10, 2001.

² Feng, L. (1998) *The Textbook of Human Rights for Chinese Citizens*, Beijing: Economy Daily Printing House, p. 4.

women's rights, including the protection of women from domestic violence, and the weak enforcement mechanisms of these laws. It also demonstrates the limits of law as a means of attitudinal change in society. It is argued that while there does appear to be political will within the Chinese government to curb violence against women in the family, such an issue is always subordinated to the main development goal of the government, hence has long been ignored.

3.1 Early Anti-wife Beating Endeavours

Equality between men and women has always been inherent in the policy of the Chinese Communist Party. As a matter of fact, its anti-domestic violence effort started before the Party came to power in China. Although there was no such term as "domestic violence" at that time, abuse of women was recognised and was labelled as fighting against beating, cursing and abusing wives. In a report made in 1932 by the *Zhong Hua* Soviet Republic Central government to all electors, it was stated that the government would "Hope that all workers and peasant comrades understand that beating wives, bought marriage and abusing child wife belong to Feudalism".³ The report called on local governments to protect women's rights conscientiously in accordance with laws and regulations, including helping them out of violence and punishing perpetrators. Government departments and persons in charge should be subjected to administrative punishment if they had not fulfilled their duties in this respect.⁴ The Central

³ Jiangxi Women's Federation & Jiangxi Archives (1982) *Selected Work on Jiangxi Soviet District Women's Movement*, Nanchang: Jiangxi People's Publishing House, p. 2.

⁴ *Ibid.*, p. 2.

government set up a Women's Life Improvement Committee to supervise the work in this field.

During the anti-Japanese war period (1937--1945), the Chinese Communist Party resolved to tackle the problem of wife beating and took it on as one of its tasks. The Central Committee of the Chinese Communist Party wrote a letter to party committees of its base areas before the national women's day, stating its aim to "Protect women's rights, take care of women's daily life, fight against abuse of women".⁵ The Women's Committee of the Central Committee repeatedly instructed women's federations to pay attention to the beating, cursing and abusing of women.

The reason for the Chinese Communist Party being actively involved in anti-wife beating activity lies in two areas.⁶ One is that the Party took family violence as the product of feudalistic marriage, therefore it desired for it to be abolished together with the old social system. Another is that the Party considered women as a great force for the revolution, and recognised that their motivation was essential and could only be achieved if they liberated themselves; hence the party declared that liberation from family violence was an inseparable part of women's liberation.

In early 1937, the party committee of *Shan Gan Ning* border area announced to the women's federations their resolve to "guide women to get rid

⁵ Shanxi Provincial Women's Federation, *Selected Work of Shan Gan Ning Area Women's Movement*, Beijing: People's Publishing House, p. 20.

⁶ Cui, L.P. "Anti-Domestic Violence in Shan Gan Ning During Anti-Japanese War"(2000) 27 *The Journal of Shanxi Teachers University (Social Science Edition)* 86-90.

of any feudalistic bondage, fight against beating, cursing and abusing women".⁷ This illustrated that anti-family violence had been listed as one of the working tasks of the Party. At the women's federation representative conference in 1938 and 1940, Party leaders stressed the importance of "fighting against beating and cursing women"⁸ and "based on the idea of family unity, protect(ing) women's rights, and set(ting) up reasonable new relationships between family members."⁹ The Party, the government and women's federations in the border area of *Shan Gan Ning* had formed a powerful alliance against family violence.

The local women's federations took several measures to reduce cases of family violence. Women's federations would send perpetrators to relevant departments of the government, help victims to appeal and push the government to have trials if the harm was very serious. As to ordinary beating cases, women's federations would repeatedly criticise and educate perpetrators. In some areas, women's federations gathered the public to hold meetings to chastise perpetrators, or place high white hats on them and parade them on streets.¹⁰ In addition to these punitive measures, women's federations conducted educational campaigns to encourage harmonious family relationships and promote equality between couples so as to indoctrinate the general public into believing that wife beating was shameful. Local people took the view that wife

⁷ "New Decision on Women's Organizations Made by Border Area Party Committee" (1937) *Work of the Party* 44.

⁸ "Discussion Summary of the First Women's Representative Conference in Border Area", *Xin Zhong Hua Bao*, April 24, 1938.

⁹ "Resolution of the Second Expanded Implementation Committee of Shan Gan Ning Border Area Women's Federation" (1941) 3 *Chinese Women* 9.

¹⁰ Qu, M.J. "Brief Account of Working Style of Women's Work", *Liberation Daily*, Nov. 1941, cited by Cui L.P. "Anti-Domestic Violence in Shan Gan Ning during Anti-Japanese War" (2000) 27 *The Journal of Shanxi Teachers University (Social Science Edition)* 86-88.

beating was a common practice to make women virtuous wives and obedient daughters-in-law. Women were urged to participate in political, economic, and educational activities to promote the image of self-independence in order to break the old habit of looking down upon women.¹¹

The Chinese government was determined to utilise laws and regulations to support its anti-family violence campaigns by drafting the "*Shan Gan Ning* Border Area Marriage Regulation"¹². The regulation granted women equal rights with men in filing for a divorce on the basis of domestic violence. The regulation turned out to be very effective, because the majority of marriage contracts in the border area were concluded in the form of bought marriages due to the poor economic conditions there. Thus, if a woman filed for divorce, this meant that the man not only lost his wife but the money he initially spent to purchase her. Afraid of losing both, men behaved themselves to avoid such troubles.¹³ This is the first marriage regulation with anti-domestic violence articles in it. Unfortunately the 1950 marriage law as well as the 1980 marriage law did not contain similar articles.

3.2 The 1950 Marriage Law and Its Impact on Women

The 1950 Marriage Law was the first law enacted by the Chinese Communist government when it came into power in 1949. The marriage law adopted on May 1st, 1950 abolished all kinds of feudal marriage and granted women equal rights with men in marriage and family life for the first time in Chinese history.

¹¹ Cui, op. cit. n. 6, at p. 86-88.

¹² *Ibid.*, p. 89.

¹³ *Ibid.*, p. 89.

Furthermore, it gave expression to the spirit of the Universal Declaration of Human Rights in articles 1 and 2, which state that "all human beings are born free and equal in dignity and rights" and are entitled "to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, sex ..."¹⁴ It contained 8 chapters and 27 articles.¹⁵

Article 1 illustrated the spirit of the law. It asserted that "The feudal marriage system which is based on arbitrary and compulsory arrangements and [advocates] the superiority of man over woman and ignores the children's interests shall be abolished. The New-Democratic marriage system, which is based on the free choice of partners, on monogamy, on equal rights for both sexes, and on the protection of the lawful interests of women and children, shall be put into effect."¹⁶ The anti-feudal character of the law was predominant. Article 2 listed feudal acts that were forbidden by the marriage law: bigamy, concubinage, arranged marriage, child betrothal, interference with the remarriage of widows, and the exaction of money or gifts in connection with marriages.¹⁷ The marriage law granted women rights of divorce when their husbands committed concubinage, bigamy, and adultery.¹⁸

Another striking characteristic of the law is the equality between men and women, husband and wife. Marinus J. Meijer has noted that "the true

¹⁴ United Nations, *United Nations Work for Human Rights*, Sales No. 65.I.19, p. 2.

¹⁵ Chapter I. General Principles (1-2); Chapter II. Conclusion of Marriage (3-6); Chapter III. Rights and Duties of Husband and Wife (7-12); IV. Relations Between Parents and Children (13-16); V. Divorce (17-19); VI. Maintenance and Education of Children after Divorce (10-22); VII. Property and Maintenance after Divorce (23-35); VIII. Additional Provisions (26-27).

¹⁶ Buxbaum, D.C. (1978) *Chinese Family Law and Social Change*, Seattle and London: University of Washington Press, pp. 478-483, Article 1 of The Marriage Law of the People's Republic of China.

¹⁷ *Ibid.*, the 1950 Marriage Law, article 2.

purpose of the law is to establish the position of women on an equal footing with men and that in fact this is the only purpose of the law."¹⁹ Article 7 defined the relationship between husband and wife as "companions living together and shall enjoy equal status in the home."²⁰ Article 8 further defined the spouse relationship as "duty bound to love, respect, [to] assist and look after each other, to live in harmony, to engage in productive work, to care for the children and to strive jointly for the welfare of the family and for the building up of the new society."²¹ The whole of Chapter III illustrated the principle of equality between husband and wife in the following areas: choice of occupation, participation in work and social activities (article 9), possession and management of family property (article 10), using his or her own family name (article 11), and inheriting each other's property (article 12).

The Agrarian Reform Law was promulgated in June 1950. According to Kay Ann Johnson, both laws were anti-feudal as both of them attacked the traditional structure of clan authority.²² The promulgation of these two laws raised women's status both economically and politically. The land reform provided women with opportunities for the first time in gaining property. The French feminist critic Julia Kristeva described it as "each poor peasant received a piece of land. To emphasise the equality of men and women, women peasants

¹⁸ *Ibid.*, p. 465.

¹⁹ Meijer, M. J. (1971) *The Marriage Law and Policy in the Chinese People's Republic*, Hong Kong: Hong Kong University Press, p.79.

²⁰ *The Marriage Law Of The People's Republic Of China* in Buxbaum, D.C. (1978) *Chinese Family Law and Social Change*, Seattle and London: University of Washington Press, pp. 478-483. Article 7.

²¹ *Ibid.*, article 8 of the 1950 Marriage Law.

²² Johnson, K. A. (1983) *Women, the Family and Peasant Revolution in China*, Chicago and London: The University of Chicago Press, p. 102.

received their own deeds, or had their names inscribed on the family deeds."²³ This undoubtedly changed women's position inside and outside of the family, because they had more choices and possibilities for independence.²⁴ The two laws also enabled women to participate in public and political activities outside their homes for the first time. As a matter of fact, many women activists who participated in land reform were recruited into local leadership groups. The percentage of women cadres raised dramatically from 8% in early 1951 to 14.6% in 1955.²⁵ From 1949 to 1953, the percentage of females in paid employment increased from 7.5% to 11%.²⁶ The 1950 Marriage law set a starting point for women to take part in economic as well as political activities.

The direct consequence of the law was the significant numbers of "unhappy arranged marriages being dissolved and followed by happy unions based on free choice".²⁷ Meanwhile divorce cases initiated by women from 1950 to 1953 increased dramatically, which indicated that women were utilising the law to free themselves from failed marriages.²⁸ Statistics showed that 50% of these women were aged between 25 and 45 years, 40% under 25, and 10% were younger people or old people.²⁹ This illustrated that the marriage law changed the attitude of young and middle-aged women towards marriage. More

²³ Kristeva, J. (1977) *About Chinese Women*, London: Marion Boyars Publishers Ltd, p. 130.

²⁴ *Ibid.*, p. 108.

²⁵ *Ibid.*, p. 107.

²⁶ Andors, P. (1983) *The Unfinished Liberation of Chinese Women 1949-1980*, Bloomington: Indiana University Press, p. 30.

²⁷ Davin, D. (1976) *Women-Work --- Women and the Party in Revolutionary China*, Oxford: Clarendon Press, p. 89.

²⁸ Almost all literatures about the 1950 Marriage Law mentioned the rising divorce rate. For details, read Davin, op. cit., n. 27, at pp. 98-102. Kristeva, op. cit., n. 23, at pp. 133-134.

Johnson, op. cit., n. 22, at pp. 117-118.

²⁹ Davin, op. cit., n. 27, at p. 100.

and more women accepted marriage based on free choice of partners, on monogamy, and on equal rights for both sexes.

However, because the marriage law was focused on abolishing feudal marriages and putting women on equal footing with men in employment, inheritance, and property management, it failed to replicate the anti-violence articles that existed in the "*Shan Gan Ning* Border Area Marriage Regulation". Family violence was not listed as a reason for women to file for a divorce. The omission did not indicate that the extent of family violence had reduced a lot that little attention should be paid to it. On the contrary, family violence increased dramatically due to women's demand for divorce and free choice of partners. In 1951, ten thousand women were said to lose their lives because of suicide or homicide by their husbands' or fiancés' family.³⁰ The Ministry of Justice estimated that about 70,000 to 80,000 women had been murdered or were forced to commit suicide each year since the promulgation of the law.³¹ There were frequent incidents of women being beaten and humiliated by their husbands' family because they sought a divorce or refused to be betrothed, or else were looking for lovers by themselves.³² Some women committed suicide as their struggle for freedom in marriage failed and they were forced to return to abusive relationships that became even worse.³³

Women's federations took the increase of violence against women not only as "an intolerable traditional situation which had not yet been sufficiently

³⁰ *Ibid.*, at p. 87.

³¹ People's Daily, May 30, 1953. People's Daily, February 25, 1953, p. 2.

³² Johnson, op. cit., n. 22, at p. 132.

³³ *Ibid.*

changed"³⁴, but also as the result of lack of support and protection by local governments. The solution of the problem was not in legal procedures but through administrative measures. In 1951, the central government ordered regional and local governments to investigate such cases thoroughly so that the culprits could be punished.³⁵ In the same year, *Zhou Enlai*, head of the Government Administrative Council, issued an order requiring governments at regional and provincial levels to investigate and correct mishandled cases, meanwhile promoting training among cadres.³⁶

The extensive publicity of the law and the public campaign had a positive impact on abolishing "feudal relationships" and building up "family democracy". Family group discussions and mediation became measures to solve family conflicts. It was reported that mistreatment of women and cases of murder and suicide were reduced. Serious mistreatment of women in the family was denounced by the general public.³⁷ According to Judith Stacey, the implementation of the marriage law weakened the authority of husbands over wives. Wife beating survived, but "it seemed to have diminished and to receive less community support".³⁸

There was no doubt that the marriage reform campaign had a short-term effect in reducing violence against women. However, counting on campaigns to uproot feudalistic ideology and thousands of years of wife beating has obvious

³⁴ *Ibid.*, p. 132.

³⁵ Davin, op. cit., n.27, at p.100.

³⁶ "Government Administrative Council Directive on the Investigation of Conditions Relating to the Implementation of the Marriage Law," *People's Daily*, September 29, 1951.

³⁷ Johnson, op. cit., n.22, p. 146.

³⁸ Stacey, J. (1983) *Patriarchy and Socialist Revolution in China*, Los Angeles: University of California Press, p. 227.

limitations. In this case, the disadvantage of a campaign is that when it is over, violence against women is left unmonitored again.

The significant omission of anti-violence articles in the 1950 marriage law was closely related to the Marxist view of the Chinese Communist Party towards women's liberation. The origins of female subordination, according to Friedrich Engel, are related to their exclusion from productive activities outside the family; this exclusion starts with the development of private property.³⁹ Based on Engel's theory, the Chinese Communist Party centred its work on promoting general social emancipation of women by absorbing them into paid labour. It is believed even today that the liberation of women, including raising their status within the family, is very much dependant on enlarging women's economic role outside of the family and changing their relationship to production. Once women are brought into social production, interrelated changes in all areas of society will occur. Meanwhile, oppressive family relationships, and the patriarchal attitudes and family structures will be broken. The entire cultural structure of female inferiority would be disintegrated, and a new structure of equality between men and women would be established.⁴⁰ This optimistic view has led to the neglect of women's rights in the family in later legal drafting in China, such as the 1980 Marriage Law and the Women Protection Law (1992).

³⁹ Engels, F. (1942) *The Origin of the Family, Private Property and the State*, New York International, quoted in *Forward To New Women in New China*, 1972, Peking Foreign Languages Press, p. 4.

⁴⁰ Johnson, op.cit. n. 22, pp. 88-89.

3.3 The 1980 Marriage Law

Adopted at the Third Session of the Fifth National People's Congress and made effective from January 1st, 1981, the 1980 Marriage Law⁴¹ appeared to be a more complicated law. It contained ten more articles than the 1950 Marriage Law did. It had 5 chapters and 37 articles.⁴² The law aimed at the maintenance of a stable social environment and the improvement of the quality of people's life.⁴³

The 1980 Marriage Law retained most of the articles of the 1950 marriage law. It adhered to the principle set by the 1950 Marriage Law; meanwhile it embraced articles 15 and 16 of CEDAW, with the exception of the article about children.⁴⁴ The law upheld the principle that a marriage must be entered into freely by the parties concerned. Freedom of marriage is considered as an important legal right for people in China, meanwhile bigamy is strictly forbidden.

Under the law a large number of rights are guaranteed in order to implement the principle of equality of rights and obligations between men and

⁴¹ The law is known as 1980 Marriage Law, because it was promulgated by Order No.9 of the Chairman of the Standing Committee of the National People's Congress on September 10, 1980.

⁴² *The Laws of the People's Republic of China 1979-1982*, compiled by the Legislation Affairs Commission of the Standing Committee of the NPC of the People's Republic of China and the Foreign Languages Press, Beijing, China. Chapter I General Provisions (article 1-3); Chapter II Marriage Contracts (article 4-8); Chapter III Family relations (article 9-23); Chapter IV Divorce (article 24-33); and Chapter V Supplementary Provisions (article 34-37).

⁴³ Law, A. M. W. & Kwan, A. W. C. "Law of Family, Marriage and Succession" in Wang, G.G. & Mo, J. (1999) *Chinese Law*, London: Kluwer Law International, p. 428.

⁴⁴ Article 15 of CEDAW requires states parties to grant women equal rights with men before the law. Article 16 states that "parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations". Article 16 (e) of CEDAW states "The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

women in every aspect of family life. Thus, article 9 stated "husband and wife shall have equal status in the family." Article 8 maintained that "after a marriage has been registered, the woman may become a member of the man's family or vice versa, depending on the agreed wishes of the two parties." Article 10 confirmed that "both husband and wife shall have the right to use his or her own surname and given name." Both parties have the freedom to participate in all kinds of activities, "neither party may restrict or interfere with the other party."⁴⁵ The property acquired in the duration of the marriage shall be in the joint possession of the two, and both parties enjoy equal rights in the disposition of their property.⁴⁶ Furthermore, it was decided that husband and wife shall have the right to inherit each other's property.⁴⁷ In addition, the law declared that "Husband and wife shall have the duty to maintain (financially support) each other. If one party fails to perform this duty, the party in need of maintenance shall have the right to demand maintenance payments from the other party."⁴⁸

Moreover, a new article about maltreatment was added to the marriage law. Article 3 stated that "maltreatment and desertion of one family member by another shall be prohibited." The National Supreme People's Court issued guidelines in its Opinions on Determination of Breakdown of Mutual Affection Between Husbands and Wives in the Divorce Proceedings of 1989. III-

⁴⁵ Article 11 of the 1980 marriage law.

⁴⁶ *Ibid.*, article 13.

⁴⁷ *Ibid.*, article 18.

⁴⁸ *Ibid.*, article 14.

treatment of family members is listed as one of 14 elements to grant a divorce.⁴⁹ The Criminal Law of 1979 makes abuse of a family member (including husband abusing wife) punishable by up to 2 years in prison, or under criminal detention or control. Those mistreating their family members, causing the victims to suffer severe injuries or death, are to be sentenced to 2 to 7 years in prison. The applicability of the law to domestic violence cases will be discussed in detail in later sections.

Divorce can be obtained either by the agreement of both parties or through legal proceedings. Divorce by agreement is the simplest in procedure provided that both parties desire it, and appropriate arrangements have been made for children and disposition of property.⁵⁰ Both parties apply to the marriage registration office for divorce registration with their identity certificates, divorce agreement and marriage certificate, and a reference letter issued by their work units.⁵¹

Conversely, divorce through legal proceedings is much more complicated. Under article 25, the working units of the parties or the neighbourhood committee shall carry out mediation first. If it is not effective, the couple can go to court to choose either divorce through mediation or divorce by judgement. The people's court is again required by law to mediate at

⁴⁹ Law & Kwan, *op. cit.*, n. 43, at pp. 426-427.

⁵⁰ Article 24 states that "divorce shall be granted if husband and wife both desire it. Both parties shall apply to the marriage registration office for divorce. The marriage registration office, after clearly establishing that divorce is desired by both parties and that appropriate arrangements have been made for the care of any children and the disposition of property, shall issue the divorce certificates without delay."

⁵¹ Wang, C. G. & Zhang, X.C. (1977) *Introduction to Chinese Law*, Hong Kong: Sweet & Maxwell Asia, p. 313.

every stage of the proceedings with the aim of restoring the relationship between the parties. If mediation turns out to be ineffective, the court then mediates the disputes between the couple over matters like children and property. When an agreement is reached with the help of the court, a divorce certificate will be issued. If no agreement can be reached, the court will judge the state of the marriage, and decide whether a divorce should be granted.⁵²

Although maltreatment of family members is one of the fourteen conditions to issue a divorce, domestic violence is not specifically mentioned, and divorce proceedings will take longer because of mediations at various stages. If the divorce application is turned down, both parties have to wait for six months before a second divorce application is allowed. This is the most dangerous period for abused women, because it is during this time that perpetrators are likely to turn more violent, as is witnessed by the numerous reported incidents of serious bodily harm.⁵³ In fact, some women filed several times for divorce without getting permission until they were seriously hurt. Some have even died as a result of their husbands' extreme physical abuse.⁵⁴

⁵² *Ibid.*, pp. 314-315.

⁵³ "Violence Comes from Family Tragedy", *Chinese Women News*, April, 3, 2001. The victim was burnt two months after she filed for a divorce; "When Will Domestic Violence End?", *Chinese Women News*, Jan. 16, 2001. The victim's face was seriously damaged in court after she filed for a divorce; "Domestic Violence Produces Another Tragedy", *Fa Zhi Wen Cui Bao*, Jan. 1, 2001. One eye of the victim was dug out and half of her tongue was cut in two pieces. Deng, Z. J. "Domestic Violence Report" reported when the woman asked for a divorce, her husband was very angry at her. He dug her two eyes out and cut her sinews in arms, legs and feet.

⁵⁴ Li, G.Q. "Fighting Against Domestic Violence", *Yangcheng Evening News*, Feb. 19, 1997. The woman unsuccessfully filed for a divorce on four occasions until she was forced to jump out of the window from the third floor and was seriously hurt; Ma, Y.M., "When It Is Time to Fight Back, Fight Back!", *Hei Long Jiang Ri Bao*, Feb. 11, 1998. Both victims failed to get a divorce in spite of several requests, due to the refusal of their spouses. One woman was cut six times with a knife while the other was beaten to death.

The marriage law fails to provide any protection to abused women during this period of time.

Compared to the 1950 Marriage Law, the 1980 Marriage Law has two striking characteristics. One is about family planning while the other is about family relations. Under Chapter III on family relations, there are 8 new articles aimed at harmonising citizen's family relationships, based on the belief that the stability of a basic unit of society leads to solidarity of the whole society. It is very much emphasised that family members should support each other, including husband and wife, parents and children, grandparents and children, step children and step parents, and brothers and sisters.

Family planning articles were added to the 1980 marriage law. Article 2 stated that "family planning shall be practised". Article 12 stipulated that "both husband and wife shall have the duty to practise family planning". The minimum age of marriage⁵⁵ was also raised as a means to control China's population.⁵⁶ In support of the family planning policy, two new articles were added to the marriage law. Article 8 stated that "after a marriage has been registered, the woman may become a member of the man's family or vice versa, depending on the agreed wishes of the two parties." Article 16 decreed that "children may adopt either their father's or their mother's surname". Both articles 8 and 16 aimed to minimise the side effect of the one child policy by stressing the equality between men and women.

⁵⁵ According to the 1980 Marriage Law, article 5, the minimum age for a marriage is 20 for women and 22 for men.

⁵⁶ Law, op. cit., n. 49, p. 423.

However, the above articles have not changed society's attitude toward favouring male children nor has it affected the traditional view of preferring to raise sons over daughters as security for old age. In fact, the marriage law further strengthens such a view, because it puts the responsibility of taking care of both the young and old on the family. Relevant articles imposed the caring responsibility of the old generation on the young instead of improving social security mechanism to support old people.⁵⁷ Such a responsibility further differentiates daughters from sons and encourages son-preference, especially in the countryside where their manual labour is in high demand. Parents force their sons to divorce their ageing wives in order to marry younger women who might bear sons. My fieldwork demonstrates that son-preference is one of the causes for domestic violence. Although the law advocates the practice of a man to become a member of his wife's family and for children to adopt their mothers' surnames, this rarely happens in real life, because no family with a single son would allow him to live with the in-laws. The impact of the family planning articles has long-term and far-reaching consequences on women, and will be investigated further in the next section.

3.4 One Child Policy and Its Impact on Women

China had seen a rapid population growth in the fifties and sixties. The disadvantage of a large population emerged as rampant population growth

⁵⁷ Article 15 of the 1980 Marriage Law stated that "Children shall have the duty to support and assist their parents... If children fail to perform their duty, parents who are unable to work or have difficulty in providing for themselves shall have the right to demand support payments from their children."

gorged up hard-earned economic gains. Restraining reproduction was put onto the government agenda in late 1970s. The government's intentions were to reduce population, raise people's living standard, and achieve political stability. This had been pursued by postponing the legal age for marriage and childbearing and controlling the number of births for each couple. The aim of the Chinese policymakers was to reduce the rate of generational turnover by raising the age of the first bearing by two or four years. It was calculated that this planning could cut the number of generations over a century by four or five. From 1971 to 1978, the slogan was "later, longer, and fewer", which means late marriage, late childbearing, few births, and quality births.⁵⁸ Bearing one child only was encouraged although another opportunity could be given to rural couples, especially when the first child was disabled or a daughter.

The impact of the family planning policy on women is far-reaching. Although the law stipulated that "both husband and wife shall have the duty to practice family planning", the responsibilities are carried out by women, because the majority of married women have IUD placed after giving birth to a child. Women have to bear the consequences of spontaneous abortions and the side effects of IUD, such as bleeding and heavy menstruation. Under the supervision of the state family planning committee, its local branches enforce the policy strictly. This can result in female infanticide and imbalance of sex ratio.

⁵⁸ Greenhalph, S. "The Peasantization of the One-Child Policy in Shaanxi" in Davis, D. & Harrell, S. (1993) *Chinese Families in the Post-Mao Era*, California: University of California Press, p. 228.

Childbearing is considered as an important economic issue as it brings about increased labour and income, together with support in old age. All these obligations are expected to be fulfilled by sons because daughters join their husbands' families when they get married. Therefore sons are regarded as the principle providers for their parents in old age. The rural economic policies (family contract system) have exacerbated peasants' need to rely on male children for economic well-being and security in old age. People's resistance to the family planning policy is reflected in the fact that roughly five percent of female babies who should be born every year are "missing" due to infanticide, sex-selective abortion, neglect or abandonment as well as non-registration. The Ministry of Public Health reported that in the five-year period ending in 1984, there were 53 million abortions (equivalent to the population of France).⁵⁹ According to statistics released by the State Statistical Bureau in 1987, compared with the world average of 106 boys per 100 girls, the estimated sex ratio at birth was 113 boys per 100 girls in China.⁶⁰ From the table made by Kellee S. Tsai below, one can see clearly that the imbalance in the sex ratio has increased yearly since 1978 when the government started to implement one-child policy.

⁵⁹ Tsai, K. S. "Women and the State in Post-1949 Rural China" (1996) 2 *Journal of International Affairs* 49. The Trustees of Columbia University in the City of New York, p. 511; Somer, J. "China Denies Reports of Forced Abortions", *Newsday*, April 4, 1985, p. 15; WuDunn, S. "China, With Ever More to Feed, Pushes Anew for Small Families," *New York Times*, June, 1991, p. 1.

⁶⁰ "Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women" (1996) Summer *Women's Rights Law Reporter* 32.

Table 3.1 1978 to 1992 Male Births Per 100 Female Births and Percentage of Unaccounted Female Births⁶¹

Year	Male Births per 100 Female Births	% of Unaccounted Females Births
1978	105.9	-0.2%
1980	107.4	1.3%
1982	107.2	1.1%
1984	108.5	2.4%
1986	111.4	5.3%
1988	112.3	6.2%
1990	113.8	7.7%
1992	118.5	12.4%

The unchanged preference for sons in Chinese culture and the state family planning policy puts tremendous pressure on women who give birth to girls. They are caught between pressures from their husbands, in-laws and other family members to bear male children and pressure from the state to limit their fertility. In fact, this is yet another contributing factor to domestic violence.

In early November and December 2001, a women's magazine, *Peasant Women Know-all*, conducted an investigation of 316 peasant women in three counties of *Hunan*, *Hebei* and *Shanxi* provinces. The research concluded that 8.4% of the investigated women had been beaten because of giving birth to

⁶¹ Op. cit., n. 59, at p. 512.

girls.⁶² Another investigation conducted by the *Liao Ning* Provincial Women's Federation (*Liao Ning* is located in the Northeast of China) based on over 5,000 women showed that rural women have to face eight marriage problems, out of which giving birth to girls was ranked second.⁶³ The report declared that "Many husbands force pregnant women to detect the sex of babies. If it is a girl, abortion is not avoidable. Women bearing girls are looked down upon or even abused by their husbands' family. Some women are forced to bear the third or the fourth child in order to get a son."⁶⁴

There are no official national figures released about the percentage of abuse caused by giving birth to baby girls. There is a lack of attention to this issue judging from statistics and secondary sources available. Such a phenomenon can be explained by the fact that many reports on such issues would bring negative effects on the implementation of the family planning policy. Therefore government-controlled research organisations tend to turn a blind eye to the issue.

3.5 Existing Legal Mechanisms Applicable to Domestic Violence

Prior to the 2001 Marriage Law, the term 'domestic violence' was not mentioned in any laws passed in China. Some of the articles scattered in several laws could be applied to deal with domestic violence. These can be divided into two categories, namely initiative articles and operative provisions.

⁶² Song M.Y. "Reading the Silent Resistance or Tolerance — Investigations on Abused Women in Rural Areas" published in *Chinese Women*, Feb. 15, 2001.

⁶³ "Rural Women Face Eight Marriage Problems", *Chinese Women*, Feb. 13, 2001.

⁶⁴ *Ibid.*

3.5.1 Initiative Articles

Article 49 of the Chinese Constitution states that it is prohibited to abuse the elderly, women, and children.⁶⁵ Article 3 of the 1980 Marriage Law states that abuse and abandonment among family members are prohibited. Article 9 of the law provides that husband and wife shall enjoy equal status in the family.⁶⁶ Article 2 of the Law on the Protection of Women's Rights and Interests states that discriminating, abusing or injuring women is prohibited. Article 33 lays down that the state protects the rights of the person which women enjoy equally with men. Article 34 dictates that women's rights of the person brook no infringement. Article 35 asserts that a woman's rights to life and health shall not be infringed.⁶⁷ Among these laws, only The Law on the Protection of Women's Rights mentions implementation mechanisms which in this case is the All-China Women's Federation and its branches all over the country.⁶⁸ However, this organisation is non-governmental, and has no law enforcement power. Therefore these articles only create a guiding principle for protecting women's rights. They provide neither an operative remedy for abused women nor practical measures to control domestic violence.

⁶⁵ The Constitution was passed by the Fifth Session of the Fifth National People's Congress on December 4, 1982. It was amended in 1988, 1993 and 1999.

⁶⁶ The Marriage Law of the People's Republic of China was passed by the Third Session of the Fifth National People's Congress on September 10, 1980. It took effect on January 1, 1981.

⁶⁷ The Law of the People's Republic of China on the Protection of Rights and Interests of Women was adopted by the Fifth Session of the Seventh National People's Congress on April 3, 1992.

⁶⁸ Article 5 of the law states "Representing and safeguarding the interests of women of all ethnic origins and from all walks of life, the All-China Women's Federation, as well as all levels of women's federation, should protect women's rights and interests."

3.5.2 Operative Provisions

There are some operative provisions in the Criminal Law, the General Principles of Civil Law, and the Regulations on Administrative Penalty for Public Security. According to these articles, perpetrators can be punished by criminal sanctions, administrative penalties, and possibly be ordered to pay fines.

1. Criminal Law

In criminal law, mistreatment of family members is placed under 'Crimes of Disrupting Marriage and Family'. Article 260 states that those mistreating their family members, if the case is serious, are to be sentenced to 2 years or less in prison, or put under criminal detention or control. Those who mistreat their family members, causing the victims to suffer severe injuries or death, are to be sentenced to 2 to 7 years in prison. Those committing the crime of mistreating their family members are to be investigated only if they are sued. However, although the sentences are quite definite and fixed, there are many criteria to meet before the crime of mistreatment can be proved. In judicial practice, the following circumstances need to be met:

- (a) The mistreatment occurs with high frequency, even if it is for a short period of time.
- (b) The underlying motivation is vicious, for example to force the wife to consent to the divorce or intention on the part of the husband to start a new relationship in order to have a son.
- (c) The act of mistreatment is cruel and inhuman.

(d) The consequence is severe, such as causing mental problems, injury and disability, death, and suicide.

In addition to meeting the above requirements, such cases can only be intervened through voluntary prosecution, which means that the victim must sue the perpetrator, otherwise relevant organs will not intervene.⁶⁹ This stipulation greatly reduces the power of the article in dealing with domestic violence cases due to the nature of such cases. The majority of victims do not want their husbands to be arrested due to various reasons ranging from economic dependence, unwillingness to end the relationship, feelings of guilt to explain the problems to children, or even to face the public. (If a woman puts her husband in prison because he breaks her rib, the woman has to face gossip from neighbours for being too cold-hearted.)

Violence resulting in death or serious bodily injury under article 232 and 234 will be applicable to punish perpetrators. Article 232 states that those intentionally killing another are to be sentenced to death, life imprisonment or not less than ten years of fixed-term imprisonment. If the circumstances are minor, he is to be sentenced to no less than three years and no more than ten years of imprisonment.

Article 234 concerns the crime of inflicting injury on other people. It can also be used to punish domestic violence perpetrators. It stipulates that whoever intentionally injures the person of another is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or

⁶⁹ Zhao, Y.H. "Domestic Violence in China: In Search of Legal and Social Responses" (2001) 18 *UCLA Pacific Basin Law Journal* 211, available in Westlaw, cite as: 18 UCLA Pac. Basin

control. Whoever commits the crime in the preceding paragraph and causes a person's serious injury is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; if he causes a person's death or causes a person serious deformity by badly injuring him with particularly ruthless means, he is to be sentenced to not less than ten years of fixed-term imprisonment, life imprisonment, or the death penalty. Where this law has other stipulations, matters are to be handled accordingly. This article can only apply to serious domestic violence cases that result in serious injury of victims. As a matter of fact, my empirical research shows that the overwhelming majority of domestic violence cases do not fall into this category; therefore this article can only be applied to a small number of domestic violence cases.

Sexual abuse or sexual violence within marriage remains untouched by the Criminal Law. There is one article about the crime of rape. Article 236 of the Criminal Law states that whoever, by violence, coercion or other means, rapes a woman is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment. Whoever rapes a woman or has sexual relations with a girl involving one of the following circumstances is to be sentenced to not less than ten years of fixed-term imprisonment, life imprisonment, or death:

- (1) Rape a woman or have sexual relations with a girl where the circumstances are odious;
- (2) Rape several women or have sexual relations with several girls;
- (3) Rape a woman in a public place and in public;

(4) Rape a woman in turn with another or more persons;

(5) Cause the victim serious injury, death, or other serious consequences;

The conditions and punishment of this article are targeted at rape outside of marriage. Victims of sexual violence within marriage can get little help from this article. Laws and law enforcement organisations have long ignored the issue of sexual abuse or sexual violence. Only in recent years has the issue been discussed among experts. There was no marital rape case reported before 1999,⁷⁰ therefore we have enough reason to believe that no abused women have ever filed a case against their husbands for marital rape prior to 1999. According to *Yuhong Zhao*, courts only process marital rape cases under three special circumstances,

(1) in forced or purchased marriage;

(2) during the period of separation; or

(3) after an application for divorce has been filed.⁷¹

The three conditions exclude sexual abuse or rape within the majority of marriages, and therefore leaving many sexually abused women unprotected.

2. Regulations on Administrative Penalties

The Regulations of the People's Republic of China on Administrative Penalties for Public Security (Regulations on Administrative Penalties) deals with minor offences that infringe other's rights, but which are not serious enough to

⁷⁰ *Ibid.* The first marital rape case was trailed in Shanghai on December 24, 1999. The defendant forced his former wife to have sex with him after the court granted their petition for a divorce and before the court decision took effect.

⁷¹ *Ibid.*

constitute crimes. Section 22 is applicable to tackle domestic violence. It states: whoever commits one of the following acts upon a citizen's rights of the person, but not serious enough for criminal punishment, shall be detained for a maximum of fifteen days, fined a maximum of 200 yuan or given a warning:

- (1) Striking another person, causing slight injury;
- (2) Illegally limiting others' personal freedom or illegally breaking into others' houses;
- (3) Openly insulting other persons or fabricating stories to slander other persons;
- (4) Mistreating family members, where the victims thereof ask for disposition;
- (5) Threatening others' safety or disturbing others' normal lives by writing letters of intimidation or by other methods;
- (6) Coercing or inveigling a person under the age of eighteen to give frightening or cruel performances, ruining the person's physical and mental health;⁷²

All misbehaviour listed under this article is applicable to domestic violence cases. However the police tend to treat offences occurring at home differently to those in the public sphere. When incident of beating or mistreating family members occurs, the general practice for the police is to stop such incidents and mediate between them. Even if the victim is badly hurt, for example one of their ribs is broken, the police would end up by asking the perpetrator to take the victim to hospital. Arrests and fines are rarely sanctioned. A survey

⁷² It was passed at the Seventeenth Meeting of the Standing Committee of the Sixth National People's Congress on September 5, 1986, and revised on May 12, 1994.

conducted by the Changsha Women's Federation of Hunan Province shows that in private family circumstances, the local police have never applied section 22 in their daily work.⁷³ In contrast, when the same offence happens in the public sphere, the police implement Regulations on Administrative Penalties.

3. Civil Law

Article 119 of the General Principles of Civil Law provides that those who have caused injury to other people shall be liable for compensation of medical costs, loss of salary as a result of absence from work, and subsistence for disabled persons. Those who have caused death shall be liable for payment of funeral costs and subsistence for dependants of the victim.⁷⁴ This article is applicable to domestic violence cases, but in actual practice abused women seldom use this article due to complications of judicial procedure. Only when abused women file for divorce can this article be applied to get some compensation.

3.6 The 2001 Marriage Law

3.6.1 Background for Amendment of Marriage Law

Starting in the early 1980s, with the implementation of economic reforms and the "open door" policy, there have been more entrepreneurs, more people leaving their families behind to find opportunities in other cities, and more people getting rich. The phenomenon of bigamy and of living with lovers is on the increase year by year, especially in the economically developed eastern part

⁷³ Jiang, W.J. "Mediation of the Vanguard", *Worker's Daily*, November 3, 1997.

⁷⁴ The General Principles of Civil Law of the People's Republic of China was adopted at the Fourth Session of the Sixth National People's Congress and took effect on January 1, 1987.

of China. It has become one of the major reasons for women to appeal for help to various agencies.

From 1996 to 1998, the Guangdong (a city in Southeast coast of China) Women's Federation received 219, 235 complaints from women each year, among which 348 were concerned with their husbands cohabiting with lovers.⁷⁵ Some of the men even have three or four concubines. They father several children out of wedlock, a practice which goes against the country's one child policy. These men are quite proud of their ability to support more than one woman. Instead of being denounced for violating the Marriage Law, such behaviour has become a symbol of wealth in China's economically developed areas.

Bigamy or living with lovers has led to the rise of criminal cases. An investigation of 200 domestic violence cases show that 70% of serious criminal cases such as killing or disfiguration are caused by bigamy.⁷⁶ Eight people died and one was seriously injured in one city in *Guangdong* Province because of crimes of passion within two years.⁷⁷

Ninety-five percent of corrupt officials have concubines.⁷⁸ To support their lovers, corrupt officials have an insatiable desire for public money. One

⁷⁵ "Bigamy and Living with Lovers Should Be Forbidden — Suggestions Made by All China Women's Federation on the Amendment of the Marriage Law", *Legal Daily*, September 21, 2000.

⁷⁶ "Ninety Percent of Corrupted Officials Have Concubines", *Chinese Women News*, January, 11, 2000.

⁷⁷ *Op. cit.*, n.75.

⁷⁸ *Ibid.*

such official working for a bank stole more than 200 million yuan to support several lovers.⁷⁹

The constant appearance of corrupt officials with increasing amounts of graft money has severely affected the reputation of the government and caused a dramatic drop of its reliability. The All China Women's Federation took a sample investigation in 30 provinces and autonomous regions in China in April 2000. The results show that 94.2% of those investigated thought that bigamy and cohabitation with lovers should be sanctioned by laws, while 88.5% agreed that the party who hid the mutual property during divorce procedure should be punished by law.⁸⁰

Twenty years after the 1980 marriage law was put into effect, the economic and familial conditions of China has undergone great changes. The economic structure of the country has changed from ownership by the whole people and collectives to ownership of private enterprises, foreign-owned enterprises and jointly owned enterprises. This change has brought about changes in the economic structure of family life, which require new legal provisions regarding family property.⁸¹

The 1980 Marriage Law has therefore become ineffective in dealing with the above mentioned problems. If we take the offence of bigamy as an example, Criminal law and its explanation stipulate the following conditions:⁸²

(1) A married person registers his/her second marriage.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Zheng, R.C. "Drafting a Suitable New Marriage Law"(2000) 11 *Chinese Women* 4.

⁸² Article 258 of Criminal Law of PRC, which took effect on October 1, 1997.

(2) Litigant's co-habit together as wife and husband publicly although both of them know each other's marital status.

(3) A married person cohabits with a third party as husband and wife.

The reality is that no married person would register his second marriage. They do not declare themselves as husband and wife to their neighbours, but claim that their relationship is one of boss and secretary, or else sister and brother, or even master and maid.⁸³ The old-fashioned stipulation cannot regulate de facto marriages emerging in recent years.

Another aspect of bigamy is the infringement of victims' property rights. Litigants normally transfer, hide or consume mutual property before victims discover anything. When victims appeal for a divorce, no mutual property exists; some even create mutual debts for victims to share.⁸⁴ By the time the wronged wife files for divorce, it is usually too late for her to get evidence of the mutual property. This seriously infringes the rights of the woman.

Domestic violence is a great concern among the public due to its becoming increasingly serious and public. In the last six months of 1999, the All China Women's Federation received 280 thousand letters and visits. Thirty nine percent of them were about marriage and family, among which 18.3% complained about domestic violence.⁸⁵ Guangdong Provincial Women's

⁸³"For the Sake of Family and Society", *Legal Daily*, December 26, 2000.

⁸⁴Op. cit., n. 75. Victims of bigamy are women. The report says, that one woman opened a decoration company with her husband. When she discovered that her husband cohabited with another woman, she filed for a divorce. However she had no evidence of the millions of mutual profits as nobody in the company dared to give her any evidence against her husband. She filed the case for several years and became heavily in debt. The result was that her husband was not found to have committed bigamy due to lack of evidence.

⁸⁵"Articles Should Be Stipulated to Curb Domestic Violence", *Legal Daily*, September 28, 2000.

Federation investigated 1589 families in 11 cities in the province in 1995. Statistics show that 29.2% of the respondents admitted that they experienced family violence. Nearly 80% of the family violence falls in the category of husband abusing wife.⁸⁶ Serious wife abuse cases happen constantly from various regions of the country.⁸⁷

Investigations show that domestic violence has become one of the reasons for women to kill their husbands. Shanxi Provincial Women's Federation investigated a sample of 101 women murderers in 1998. Sixty three percent of them murdered their husbands, among which 45.3% were caused by long-term domestic violence.⁸⁸

Due to the above reasons, amending the marriage law was on the agenda of the legislative organs. In October 1995, the 16th session of the Eighth National People's Conference passed a resolution for amending the 1980 marriage law.⁸⁹ The Legal Working Committee of the National People's Congress was in charge of the work. A leading committee and an office were

⁸⁶ *Ibid.*

⁸⁷ "Persisting Shadow of Domestic Violence", *Nan Fang Daily*, March 2, 2001. The report uncovers serious domestic violence behind the first body donation case in Shenzhen City, Guangdong province. The 27 years old woman was beaten to death by her husband; Liu D. "He Loved His Wife to Death", *Chang sha Evening News*, May 18, 2001. The report describes how a woman committed suicide for her husband's unbearable violence; Liu, Z. Y. "An Astonishing Case of Wife-Burning", *Chinese Women*, Issue 7, 2000. The report depicts the sad story of how a violent husband burned his wife to death; Li, W. Q. "Domestic Violence Creates Another Tragedy", *He Nan Business News*, Dec. 24, 2000. It is about a woman in He Nan province whose two eyes had been dug out and tongue was cut almost into two pieces; Yi, J. M. "Domestic Violence: Shadow Under the Sunshine", *Workers Daily*, April 20, 1998. The article reported a woman taxi driver in southern part of China. Her nipples were cut by scissors. Her thumb was cut by a knife. She was forced to drink rats killer and to engrave "royal to my husband ..." on her chest, to inject liquid made by her husband to test her virginity.

⁸⁸ "Where Is the Tender Affection Between Family Members?", *People's Public Security News*, March 10, 2001.

⁸⁹ "The Step of Amending Marriage Law"(2000) 11 *Chinese Women* 5.

set up in 1996, which consisted of experts from the Ministry of Civil Affairs, the Supreme People's Court, and the All China Women's Federation.⁹⁰ The draft was changed four times before the Marriage Law of People's Republic of China (expert suggestion version) came into being.⁹¹ After wide scale discussions and investigation, a version for soliciting opinions was published in newspapers in August 2000. The amended marriage law took effect on April 28, 2001.⁹²

3.6.2 The 2001 Marriage Law — Six New Amendments

The amended marriage law has 6 chapters and 52 articles. Compared with the 5 chapters and 37 articles of the 1980 marriage law, the amended version has a new chapter with 15 articles named Succour measures and legal liability, meanwhile more than ten articles have been amended.⁹³

The 2001 Marriage Law adheres to the principle of freedom of marriage, monogamy, and equality between men and women.⁹⁴ However it has six new amendments that have great impact on women's lives.

Firstly, it adds that "Husband and wife shall be faithful to and respect each other. Within the family, family members shall respect the old and cherish the young, help one another, and maintain equal, harmonious and civilised

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Legal Daily*, April 28, 2001.

⁹³ "Decision Made by the National People's Congress on the Amendment of Marriage Law", *Legal Daily*, April 28, 2001.

⁹⁴ *Marriage Law of the People's Republic of China* (2001) Beijing: China Legal Publishing House, article 3 and 4.

marriage and family relations."⁹⁵ This embodies the spirit of the marriage law, which initiates a correct outlook on marriage--- civilised, disciplined and healthy family relations. The purpose of this article is to promote the principle of equality between men and women and establish harmonious family relationship.

Secondly, the 2001 Marriage Law outlaws domestic violence for the first time. General Provisions article 3 states that "Domestic violence shall be prohibited. Within the family maltreatment and desertion of one family member by another shall be prohibited."⁹⁶

Legal responsibilities of perpetrators are stipulated in article 43, 44, 45 and 46. This can be seen as the Chinese government's response to the concluding comments by CEDAW to its third and fourth periodic reports.⁹⁷ The concluding comments state that "The committee is concerned about the diverse forms of violence against women in China, including custodial violence, sexual abuse, domestic violence, sexual violence and sexual harassment in the workplace."⁹⁸ "The committee recommended that the Government examine and revise its laws and policies on violence against women in the light of the Committee's general recommendation 19. This should include adoption of a special law on domestic violence and provision of services for victims, such as shelters and hotlines."⁹⁹ Although China has not adopted a special law on

⁹⁵ *Ibid.*, Chapter I, General Provisions, article 4.

⁹⁶ *Ibid.*

⁹⁷ Available at www.un.org/womenwatch/daw/cedaw.

⁹⁸ Concluding comments by the Committee: China. Available www.un.org/womenwatch/daw/cedaw.

⁹⁹ *Ibid.*

domestic violence, having anti-domestic violence articles written into the marriage law shows its determination to tackle the problem. This is an action taken by the Chinese government to further implement the Beijing Declaration and Platform for Action.

Thirdly, living with a concubine is outlawed. General Provisions, article 3 states that "Bigamy shall be prohibited. Cohabitation of a married person with any third party shall be prohibited."¹⁰⁰ This article aims to protect legal marriage and to outlaw the phenomenon of polygamy. This article could contribute positively to anti-domestic violence campaigns, because having extra-marital affairs is one of major reasons for incidences of domestic violence.¹⁰¹

Fourthly, the 1980 Marriage Law only stipulated the necessary conditions for a legal marriage, however there were no articles stating the consequences of failing to meet the required conditions. The amended marriage law has added three articles to list the conditions for invalid marriage, the procedure to claim its invalidity, and related consequences.¹⁰² Article 11 acknowledges that "In the case of a marriage made under coercion, the coerced party may make a request to the marriage registration office or the people's court for the dissolution of the marriage contract. Such a request shall be made within one year as of the marriage registration date. The party concerned whose

¹⁰⁰ Op. cit., n. 94.

¹⁰¹ Zou, T. "Extra-Marital Affairs Cause Domestic Violence", *Guang Zhou Daily*, June 11, 1998. The report says that 80% of broken marriages is caused by extra-marital affairs, meanwhile domestic violence exists before these marriages finally break up.

¹⁰² Op. cit., n. 100, article 10, 11, 12.

personal freedom is curbed illegitimately shall make a request for dissolution of the marriage contract within one year as of the date on which his or her personal freedom is restored."¹⁰³ Arranged marriages, bought marriages (Abducted women are sold to men as wives), and cheating marriages are outlawed here. This is particularly significant in fighting violence against women; because arranged marriages and cheating marriages are comparatively rare in China while bought marriage is a common practice in poverty-stricken areas. Trafficking of women still exists due to the large demand of women in certain areas of China.

The Fifth amendment concerns the spousal property system. The content of spousal property is much wider and more complicated in the market economy. The 1980 Marriage Law had only one article about property.¹⁰⁴ The 2001 Marriage Law has three articles that consist of two property systems — the agreement property system and the legal property system. The combination of the two systems has the advantage of dealing with a variety of property ownership. Article 17 is about jointly possessed property, which includes pay and bonus; earnings from production and operation; earnings from intellectual property rights; property obtained from inheritance or gift except as provided for in Article 18 (3) of this law; and any other items of property which shall be jointly possessed.¹⁰⁵

¹⁰³ *Ibid.*, article 11.

¹⁰⁴ The 1980 Marriage Law, Article 13 states "The property acquired by the husband and the wife during the period in which they are under contract of marriage shall be in their joint possession, unless they have agreed otherwise".

¹⁰⁵ The 2001 Marriage Law, article 17.

The Sixth amendment aims to establish a divorce compensation system. Article 46 states that "a no-fault party shall have the right to make a request for damage compensation under any of the following circumstances leading to divorce:

- (1) Bigamy;
- (2) Cohabitation of a married person with any third party;
- (3) Domestic violence; and
- (4) Maltreatment and desertion of one family member by another.¹⁰⁶

This article punishes the listed behaviours by putting the economic burden on the wrongdoers. This not only compensates victims and punishes wrongdoers but also enforces discipline for couples to be loyal to each other and to promote an ethical social environment.¹⁰⁷

The Seventh adjustment to the marriage law involves a new chapter with 15 added articles. Chapter V Succour Measures and Legal Liability aims to sharpen the teeth of the law. This is a great progress in legal drafting, compared with the Women's Law, which was criticised by CEDAW as failing to "provide for effective remedies in cases of violation of the law."¹⁰⁸ The 15 articles are about whom can help, how to help, and how to punish. In general, the new law has overcome the drawbacks of Chinese laws to a certain extent, such as it being too general, as having a lack of enforcement mechanisms, and an unclear division of responsibilities.

¹⁰⁶ *Ibid.*, article 46.

¹⁰⁷ Wang, L. M. "My Opinion to Crime of Bigamy and Fault Party Compensation"(2001) 3 *Chinese Lawyer* 54.

3.6. 3 Domestic Violence — An Outlawed behaviour

"Periods of legal reform, which accompany democratic transformations, are the ideal times for treaty norms to be internalised in domestic legal systems. These seem to be the best times to ensure the inclusion of treaty norms in the constitution and in the legal system as a whole."¹⁰⁹ China meets the two conditions set out here to internalise UN treaties in its domestic legal systems. UN treaties have had their greatest impact when they have been made part of domestic law spontaneously, and not as a result of external norm enforcement (through reporting, individual complaints or confidential inquiry procedures).¹¹⁰ The Declaration on the Elimination of Violence against Women (DEVAW) has been converted into Chinese law.

Domestic violence is defined in the new marriage law as "actor beats, binds, harms, limits one's freedom by force or takes other measures to family members, cause harmful consequence to their physical, psychological, and other states. Continuous and frequent domestic violence constitutes abuse."¹¹¹ This shows China's acceptance of the approach adopted by the international community compared with the definition made by DEVAW.

The UN's definition includes "threats of such acts" while the Chinese version does not. The Chinese version narrows the definition of the UN in the

¹⁰⁸ Principle areas of concern and recommendations, Concluding comments by the Committee: China, available in www.un.org/womenwatch/daw/cedaw.

¹⁰⁹ Heyns, C. & Viljoen, F. (2002) *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, The Hague/London/ New York: Kluwer Law International, pp. 35-36.

¹¹⁰ *Ibid.*, p. 35.

¹¹¹ Several Explanations about Marriage Law of the People's Republic of China Made by the Supreme People's Court, article 1, *People's Court*, December 27, 2001, p. 4.

sense that it excludes forms of psychological violence from protection. Psychological violence is one of the three aspects of violence; therefore it is very important that this should be added.

In comparison, the Chinese definition has listed major measures of domestic violence, and views 'act of violence' that could result in either physical or psychological injury or both, as core elements in defining domestic violence. The definition is quite vague as regards to sexual harm caused by domestic violence. The vagueness will lead to sexual harm being unattended, especially rape in marriage, because there are practical difficulties in collecting evidence for rape in marriage. Sexual harm needs to be addressed as it is recognised as one of the three aspects of domestic violence by UN conventions.

Serious incidents of sexual abuse that occurred in China show that this is an area that cannot be ignored. *Yang Cheng Evening News* reported a man who dug two holes in his cohabiting girlfriend's private parts and locked them with an iron lock.¹¹² The man was a typical sex abuser, who believed that each time his girlfriend went out, she would have sex with other men, therefore he locked her private parts in order to guarantee her loyalty to him. This case raises two challenges to the anti-domestic violence articles. One is the urgent need to clarify sexual abuse in the definition of domestic violence while the other is the expansion of the definition to include more groups of women.

The Chinese definition of domestic violence limits violence within the context of family (formally registered with relevant authorities), therefore it

¹¹² Li, Y. L. "Doctor of Locking Private Parts Taken Into Custody", *Yang Cheng Evening News*, February 24, 2000.

should be called family violence instead of domestic violence. The narrow definition leaves many incidents of intimate violence unregulated. The excluded categories are the following: being related to the defendant by blood; being previously married to the defendant, or having a child with the defendant; being currently or formally cohabiting with the defendant as a spouse either having a child or without a child with the defendant.¹¹³ It is necessary to expand the definition to include these categories, because these relationships are becoming more and more common in Chinese social life. The high incidents of taking concubines in coastal areas leaves women and children out of wedlock vulnerable to domestic violence. By the same token, women suffering from violence from their former husbands are also excluded from the protection of the law. This omission needs to be corrected because former spouse violence has become one of the major sources of violence in China.¹¹⁴

From the foregoing analyses, it is clear that anti-domestic violence articles are targeted at violence, especially physical violence occurring within the family. It applies to protecting certain categories of women from violence, but leaves other groups of women unprotected. From the point of view of establishing an equal and harmonious family relationship, relevant articles in the 2001 marriage law empower women in fighting against domestic violence. However, from the point of view of protecting women's human rights in

¹¹³ Zhao, Y.H. "Domestic Violence in China: In Search of Legal and Social Response"(2001) 18 *UCLA Pacific Basin Law Journal* 211.

¹¹⁴ Lu, P. "Law Loses Power in Face of Violent Harassment from Former Husband", *China Women News*, Feb. 3, 2000. The report says, statistics from a local women's federation in Harbin, a city in northern part of China, show that 19% of the 230 family violence cases related to violence inflicted by former husbands.

intimate relationships, the definition is too narrow, therefore relevant articles are far from powerful and sufficient. A separate anti-domestic violence law is still required.

There are five articles on domestic violence in the 2001 Marriage Law. These are articles 32, 43, 44, 45, and 46. Article 32 states that divorce shall be granted if mediation fails when domestic violence, maltreatment and desertion of one family member by another exist in the marriage. The article empowers abused women to walk out of the abusive relationship by filing for a divorce for the reason of being abused.

Article 43 states that family violence victims have the right to make a request to the neighbourhood or village committee as well as the units in which the parties concerned work. These organs shall dissuade the wrongdoer, and offer mediation. With regard to the domestic violence being committed, the above mentioned organs shall dissuade the wrongdoer. The public security organ shall subject the wrongdoer to an administrative penalty in accordance with the relevant provisions of administrative sanctions for public order.¹¹⁵ The significance of the article is two-fold. On the one hand, the article signals a changed view towards domestic violence, which is that domestic violence is not a family matter that should remain within the family. Meanwhile abused women are encouraged to approach neighbourhood or village committees and public security organs. On the other hand, the listed organs are duty-bound to intervene in such incidents. This may change the present situation where it is up

¹¹⁵ Article 43 of the 2001 Marriage Law.

to individual neighbourhood or village committees or police stations, even individual persons to decide whether he/she is willing to intervene. This is particularly important, for it will gradually change the attitude and the general practice of staff in neighbourhood and village committees and police stations. However, it is not powerful enough because it does not stipulate punishment for those who neglect their duties.

Article 44 states that the victim of desertion by family member shall have the right to make a request to neighbourhood or village committee as well as the units in which the parties concerned work. These organs shall dissuade the wrongdoer and offer mediation. If the victim makes a request, the people's court shall "pass a judgement on the effecting of maintenance, upbringing and support payments according to law."¹¹⁶

Article 45 grants victims of bigamy, domestic violence, maltreatment and desertion legal rights to institute a voluntary prosecution in a people's court if it constitutes a crime. The public security organ shall investigate the case and the people's procuratorate shall initiate a public prosecution according to the law.¹¹⁷ My interviews with 30 abused women¹¹⁸ show that both the public security organ and the people's procuratorates are reluctant to intervene in family disputes even if such acts constitute a crime. The commonly used excuse is that domestic violence is a private matter which should be settled within the family or mediated by the neighbourhood and village committee, or that a

¹¹⁶ *Ibid.*, article 44.

¹¹⁷ *Ibid.*, article 45.

¹¹⁸ My fieldwork started in Nov. 2000 to September 2001.

woman's matter should be the responsibility of women's federation, no matter how serious it is.

The experience of a lawyer in the case of a seriously burnt woman who was represented by the Women's Law Studies and Service Centre of Beijing University better illustrates this point.¹¹⁹ The victim was severely burnt by her husband on June 12, 1997. When the lawyer asked the local police station to collect evidence at the site, the police refused, saying, "It is between the husband and wife. If we interfere, we will be blamed by the end." The lawyer went to the police station three times without getting any help from them. The lawyer had to take photos herself, which later became important evidence for the court to sentence the criminal to fifteen years of imprisonment. The police station also refused to write a letter to entitle the victim to consult a legal medical expert. According to relevant laws, a legal medical expert can only write a certificate for victims if he/she has a refereed letter from the police. The lawyer approached the local women's federation for help. The local women's federation said they had never written such a letter before. After consulting a higher level of women's federation, the local federation finally decided to write such a letter. The lawyer got the certificate from a legal medical expert through illegal channel.¹²⁰ Article 45 should prevent such a case from happening in the future. The article sets out a clear-cut division of responsibilities of the two organs in dealing with domestic violence cases, which should raise the efficiency of the two organs.

¹¹⁹ This is one of the victims I interviewed during my fieldwork in China.

¹²⁰ This is what the lawyer said to me during the interview.

Article 46 grants the legal rights of a no-fault party to make a request for damage compensation in a divorce case in which domestic violence or maltreatment and desertion of one family member by another is the cause of the divorce.¹²¹ People's courts are required to explain these rights to litigants in writing at the same time as accepting their cases.¹²² Furthermore, the article not only empowers abused women to end violence by filing a divorce with the reason of domestic violence but also enables women to get financial help from perpetrators. The compensation includes material harm compensation and psychological harm compensation.¹²³ The purpose of punishment to perpetrators is clear. This article is practical and enforceable. It has the dual function of empowering victims and punishing wrongdoers.

3.6.4 Signs of Changes

It is hard to evaluate the impact of the 2001 Marriage Law on abused women at present. However, there have already been signs of changes. The Maple Women's Psychological Counselling Centre in Beijing opened in 1992. Consultation about domestic violence accounted for 1% of all telephone calls annually. Since the 2001 Marriage Law took effect in April 2001, the figure has gone up. From April 2001 to February 2002, 13.43% of telephone calls are about domestic violence. In March 2002, the rate went up further to 36.92%.¹²⁴

¹²¹ The 2001 marriage law, article 46.

¹²² Several Explanations about Marriage Law of the People's Republic of China Made by the Supreme People's Court, article 30, *People's Court*, December 27, 2001, p. 4.

¹²³ *Ibid.*, article 28.

¹²⁴ "Anti-Domestic Violence Law Encounters Implementation Difficulties", May 31, 2002, *Chinese Women News*.

This indicates that a change of attitude to domestic violence is taking place on the ground, and more and more abused women realise their rights in marriage and try to fight for their own rights.

Conclusion

Protecting women's rights and interests has never been the major goal of the Chinese government. Regarding the principle of Chinese family law, as Michael Palmer has commented "domestic organisation should serve wider social interests in general and relevant government policies in particular."¹²⁵ This explains the reasons behind the long failure of the Chinese government to recognise the existence of family violence. Before the founding of the PRC, the Chinese Communist Party paid attention to wife beating due to the fact that it wanted to win the support of millions of women as well as its belief that women were a great force in the liberation of China. The first marriage law did not include anti-domestic violence articles because the focus of the government at that time was to build up a socialist country. Women's political, economic and social involvement in the socialist construction was seen as the primary goal of the government. The 1980 marriage law was subordinated to the country's economic reform program and family planning policy. Any efforts aimed at reducing family violence would be regarded as a distraction from the major goal of development, especially during economic reform years. Although infringement of women's rights is increasing, attempts of reducing such

¹²⁵ Palmer, M. "The People's Republic of China: Some General Observations on Family Law" (1986-87) 25 *Journal of Family Law* 42.

infringements are subordinated to the priority of protecting people's rights of existence and development. In addition, the government's political will of curbing domestic violence falls short of actual enforcement. Further, this weakness in implementation mirrors the international human rights law approach to the subject of violence against women. The Fourth World Conference on Women held in Beijing acted as stimuli for the Chinese government to pay serious attention to the issue of domestic violence. In the next chapter, I am going to analyse how this has occurred.

Chapter 4

The Fourth World Conference on Women and its Implications for the Chinese Government

In Chapter 1, I have explained the two approaches adopted by the UN to improve women's human rights, namely policy-based and treaty-based approaches. The Policy-based approach is achieved by holding international conferences and drafting declarations. A number of conferences resulting in the adoption of groundbreaking norms affecting women's lives have been held in the past. These include the former three world conferences on women, the Vienna Conference on human rights, and the most recent Fourth World Conference on Women (FWCW).

The FWCW held in Beijing was not only the largest conference for women all over the world, but it was also an event of far-reaching importance in terms of its efforts to eliminate violence against women. The impact it has had on the Chinese government and on Chinese women is obvious and significant. In general terms, as the conference was held in China, it brought the human rights of Chinese women to the attention of the world, therefore pushing the government to adjust its gender policy. In specific terms, it brought about the official recognition of domestic violence in China. Furthermore, it brought about two Chinese government programs for the development of women, in which domestic violence was listed as one of the problems to be tackled. In addition, the Conference stimulated the establishment of legal aid services for

abused women. In this chapter, I will illustrate how the FWCW pushed the Chinese government to pay more attention to women's issues in the country's economic reform era, a period in which infringements of women's human rights are a common phenomenon. I will also demonstrate how the FWCW brings domestic violence into the public domain in China and how China makes efforts to implement the Beijing Declaration and Platform for Action by embodying the main contents of the documents into its two government programs (1995 Program and 2001 Program).

4.1 Preparation for the Conference—stimuli for the improvement of women's status

On January 28, 1991, the Chinese Minister of Foreign Affairs Mr. Qian Qichen wrote a letter to the Secretary-General of the United Nations. In the letter, he invited participants to come to Beijing to attend the FWCW on behalf of the Chinese government.¹ In reply to his letter, the Commission on the Status of Women Resolution 36/8 ratified the request of the Chinese government in March 1992, stating that "The forthcoming women's conference will be held in Beijing China from September 4 to 15, 1995."²

The Chinese government took it as the most important diplomatic activity in Chinese history. China also wanted to take this opportunity to display its achievements in economic reform and in women's work to further

¹ *Important Documents of the Fourth World Conference on Women* (1998) Beijing: Chinese Women Printing House, p. 1.

² *Ibid.*, p. 4.

establish its international image as an economically open and politically improving country.³

On August 28, 1992, the first meeting of the China Organising Committee was held in Beijing. The Committee consisted of 35 high-ranking officials from different ministries, such as the state councillor, the general secretary of the State Council, the deputy minister of the Ministry of Foreign Affairs, the deputy mayor of the Beijing Government, the deputy chairwoman of All China Women's Federation.⁴ The meeting stressed that

The process of preparing for the conference should be used to strengthen women's work, to solve practical problems for women, to raise the status of women, and to promote equality between men and women. The government shall raise and select more women cadres so as to raise the ratio of women cadres at all levels. The government shall safeguard the interests of women and protect their legal rights. The government shall take all measures to fight against all sorts of criminal activities that bring harm to a woman's body and heart. The government shall bring women's talents into full play in constructing the socialist cause with Chinese characteristics in China.⁵

Furthermore, two extensive projects for women, the Chinese Women's Activity Centre and the Chinese Women's College were listed as major construction projects of the state.⁶ The former remains a site for women both nationally and internationally to discuss issues of concern in China while the latter has become a base for providing education and training for women cadres, women intellectuals and social workers.

³ *Ibid.*, p. 27.

⁴ *Ibid.*, p. 27.

⁵ *Ibid.*, p. 27.

⁶ *Ibid.*, p. 29.

Women benefited from the preparation of the FWCW in at least five aspects, namely research on women, women's work, training and education on women, publications on women, and exchanges with relevant foreign organisations.

4.1.1 Emphasis on Research Work on Women

At government level, it was felt that hosting a big international conference meant that China must meet international standards. This pushed the Chinese government to improve its work in many fields. According to the requirement of the United Nations, nation states were required to submit a State Report on Implementing the Nairobi Forward Looking Strategy six months before the regional preparatory meeting, and therefore a general co-ordinator was to write this report.⁷

The China Organising Committee for the FWCW established a writing and editing group that consisted of members from the Research Bureau of the State Council, the Ministry of Foreign Affairs, the State Statistics Bureau and the All China Women's Federation.⁸ The Writing and Editing Group conducted an enormous amount of research on the situation of women in China and drafted the report between August 1993 to February 1994. The report introduced the state's policy of equality between men and women, achievements of the government in raising women's status, and remaining problems in women's education, employment, and political participation. Based on facts, the

⁷ *Ibid.*, p. 50.

⁸ *Ibid.*

report drew up a descriptive picture of Chinese women.⁹ The report was submitted to the general secretariat of the UN Fourth World Conference on Women in March 1994.¹⁰

The Situation of Chinese Women drafted by the Press Office of the State Council was published in June 1994. It elaborated the present situation of Chinese women, the achievements made by the women's cause, and arduous efforts made by the Chinese government and people.¹¹ This was the first report on the situation of women drafted by the Chinese government that has been published.

Drafting the two documents stimulated relevant departments to do more investigations so as to acquire a better view regarding the real situation of Chinese women. The data was valuable for decision-making departments to adjust their policies. China did not have a database on women prior to this. It is illustrated by the lack of statistics in the first and second reports to CEDAW.¹² Establishing a database and strengthening research work on women are seen as the main achievements of the Chinese government's implementation of the Nairobi Forward Looking Strategy. Preparing for the FWCW speeded up the work of data collection and research on women.

⁹ *Ibid.*, p. 58.

¹⁰ *Ibid.*, p. 58.

¹¹ *Ibid.*, p. 59.

¹² In the initial report of China to CEDAW submitted in 1983, there are only two series of general statistics on women. One is about the school enrollment of females while the other is about political participation of women. In the second report submitted in 1989, there are still

4.1.2 Increased Emphasis on Policy on Women

The Chinese government considered the conference a good opportunity to promote China to the world, and to display the achievements that had been made in the field of women's work. High ranking officials stressed the importance of strengthening women's work. Mme. Peng Peiyun, State Councillor in charge of the work on women and children, Chairperson of the China Organising Committee for the FWCW and Deputy head of the Chinese Delegation to the FWCW, gave a speech at the Third Meeting of the Entire Body of the China Organising Committee. She declared:

We must publicise the great achievements we have gained in our women's work. Meanwhile we must face problems and solve practical problems for women. The Chinese government always takes the protection of women's rights seriously and implements the Nairobi Forward Looking Strategy conscientiously. China has done a great job in encouraging women to actively participate in economic, political and social development. However problems do exist. There is unequal treatment to women in terms of house allocation, employment and students enrolment. There are infringements of women's rights, such as sexual service, early dropout of girls from school, and less protection for women workers in some enterprises. We must speed up solving these problems. We hope to raise the public sense of respecting and protecting women so as to promote the civilisation of the whole society.¹³

Unfortunately, Madam Peng did not mention infringements of women's rights within the family, a daily occurrence in China, which affects the most essential of women's human rights.

two series of rough statistics on women in school enrollment and political participation. CEDAW/C/5/ADD.14.

¹³ *Working Records of the China Organizing Committee for the Fourth World Conference on Women* (1998) Beijing: Chinese Women Printing House, p. 47.

Her speech called on relevant departments and organisations to strengthen their work. In fact, the Chinese government took the process of preparing for the women's conference as the process of improving its work on women.¹⁴ Governments at all levels made more efforts to promote the implementation of the Law Safeguarding Women's Rights and Interests of the People's Republic of China (Women's Law).¹⁵ Practical work had been done in training and selecting women cadres, involving women in economic development, helping unemployed women to be re-employed, reducing women's illiteracy, safeguarding women's rights, and setting up women's education and training centres.¹⁶

4.1.3 Strengthening Training Programs for Women

Given that this was the first time that China had hosted a large-scale international conference, it became crucial to involve high-quality participants from different parts of China. The government enhanced its training programs for participants as well as non-participants. 30,000 brochures about the conference were distributed to provincial women's federations in 30 provinces, municipalities and cities.¹⁷

The government also co-operated with relevant departments in the United Nations to organise seminars on the Nairobi Forward Looking

¹⁴ *Ibid.*, p. 89.

¹⁵ *Ibid.*, p. 89.

¹⁶ *Ibid.*, p. 287.

¹⁷ *Ibid.*, p. 51.

Strategies¹⁸ and training programs for the preparation of the FWCW. Participants came from ministries, provincial governments, different parties, and universities.¹⁹ The non-governmental forum had sponsored 44 seminars, held 6,000 sessions of training programs, and trained 2 million people.²⁰ Participants were non-governmental forum organisers, cadres from women's federations, interpreters, university foreign language students who would participate in the conference, women from minority nationalities, and working staff for the non-governmental forum. The training included Nairobi Forward Looking Strategies, the background of world women's conference, foreign languages, and issues of concern to Chinese women and women in other countries.²¹ The training also included Chinese foreign policy, Chinese policy for women, women's movement and customs of foreign countries.²² These training programs broadened women's knowledge and aroused their self-consciousness. Hence, the process of preparing for the FWCW involved training millions of women cadres and women participants.

4.1.4 Enhanced Publicity on Women Issues

The Chinese government believed that one of the essential elements for hosting an international conference of this nature in a comparatively less-developed

¹⁸ The Forward-looking Strategies for the Advancement of Women is the final document of the Nairobi Conference held in Kenya 1985. The overall objective of the document is: Equality, Development and Peace.

¹⁹ *Working Records of the China Organizing Committee for the Fourth World Conference on Women* (1998) Beijing: Chinese Women Publishing House, p. 51.

²⁰ *Important Documents of the Fourth World Conference on Women* (1998) Beijing: Chinese Women Printing House, p. 80.

²¹ *Ibid.*, p. 62, p. 75, p. 83.

²² *Ibid.*, p. 187.

country was the general mobilisation of the public. From the beginning, the China Organising Committee co-operated closely with the media. According to official statistics, there were hundreds of reports about the preparation of the FWCW in 1993.²³

The main purpose for the Publicity and Mobilisation Committee in the first half of 1994 was to highlight the main theme of the conference and make it known to every household.²⁴ Forty newspapers, broadcasting stations and television stations worked together to spread news about the conference and its preparation work. By 1994, there were 1,000 reports about the FWCW.²⁵ China Central Television Station (CCTV) established a new program called "Elegant Demeanour of Women". The program introduced women with outstanding merits to the general public from September 1994 to September 1995.²⁶ On the national women's day in 1994, a nation-wide celebration was held "Celebrating women's day, Greeting 1995".²⁷ A competition on the FWCW was held all over the country, attracting millions of people.²⁸ This competition provided the general public with access to the progress and accomplishment achieved by women all over the world. Meanwhile, it stimulated the desire of participation among Chinese people. These activities brought women's issues to the spotlight, while arousing people's concerns over the problems women confront.

²³ *Op. cit.*, n. 13, at p. 51.

²⁴ *Ibid.*, p. 180.

²⁵ *Ibid.*, p. 62.

²⁶ *Ibid.*, p. 62.

²⁷ *Ibid.*, p. 62.

²⁸ *Ibid.*, p. 63.

4.1.5 Enhanced Role for Non-governmental Organisations (NGOs)

During the preparation leading to the FWCW, the Chinese government sent delegations to participate in international and regional conferences.²⁹ By attending these conferences, government officials realised that non-governmental organisations played an important role in many countries. In the report delivered on the participation of international and regional preparatory activities, Mme. Huang Qizao said that

In order to prepare for the Fourth World Conference on Women, we actively attend regional and international preliminary meetings. We realise that national and international non-governmental women's organisations are playing increasingly important roles that are not ignored by any government. Every government must take the demand and opinion of non-governmental organisations into consideration when it does research work on women and formulate policies on women."³⁰

Having realised the importance of NGOs, the government called for an active role for Chinese NGOs, such as women's federations and professional women's associations. These organisations were encouraged to take part in the NGO Forum on Women.³¹ Members of non-governmental organisation had been increased. The government also made an effort to create opportunities for NGOs to participate in international conferences.³² The NGO Forum Committee published brochures about the forum, content of speeches and its

²⁹ *Ibid.*, p. 52, pp. 60-61.

³⁰ Report Delivered by Huang Qizao on the Participation of International and Regional Preparatory Activities at the Fourth Meeting, *Working Records of the China Organizing Committee for the Fourth World Conference on Women* (1998) Beijing: Chinese Women Publishing House, p. 65.

³¹ *Ibid.*, p. 85.

³² *Ibid.*, p. 88.

speakers.³³ The Chinese NGO Forum sponsored 63 seminars on 21 subjects during the conference.³⁴ Five thousand Chinese participants, together with 26 thousand foreign participants attended these activities.³⁵

The Beijing Conference also led to the rapid development of NGOs in China in the following years. These NGOs have played an important role in promoting women's rights protection, particularly those raising and addressing issues of violence against women.³⁶ Generally speaking, the preparation for the Conference was a process of improving women's work and highlighting women's issues. This process has had a positive impact on the overall improvement of women's situation in China. It has special significance in a country where economic development goal is the priority while issues related to women's rights are taking a back seat.

4.2 Post Beijing –Domestic Violence Made its Way into the 1995 Program

President Jiang Zemin, at the welcoming ceremony for the Fourth World Conference on Women, mentioned violence against women and argued that "the phenomena of subjecting women to discrimination, oppression and even physical abuse have not vanished from the face of the earth."³⁷ He announced

³³ *Ibid.*, p. 188.

³⁴ *Ibid.*, p. 289, p. 319.

³⁵ *Ibid.*, p. 318.

³⁶ The function of NGOs in fighting against domestic violence, for example, the WLSSC will be discussed in Chapter 5.

³⁷ The speech made by President Jiang Zemin at the welcoming ceremony for the Fourth World Conference on Women, available at www.un.org/womanwatch/world/asia/china.html

to the world that "We in China have made gender equality a basic state policy in promoting social development. We are resolutely against any forms of discrimination against women and have taken concrete steps to maintain and protect the equal status and rights of women in the country's political, economic and social life."³⁸

The Program for the Development of Chinese Women (1995-2000) and The Program for the Development of Chinese Women (2001-2010) are the two outlines for the government to implement this basic state policy as well as to fulfil its duty as a state party of the UN. The 1995 program is the blueprint for China to implement the Nairobi Forward Looking Strategies and the Beijing Declaration and Platform for Action. The Beijing Declaration is a document passed during the FWCW to "advance the goals of equality, development and peace for all women everywhere in the interest of all humanity". Meanwhile, it requires commitment from governments to take priority action for the empowerment and advancement of women.³⁹ The Beijing Declaration particularly speaks of the prevention and elimination of all forms of violence against women and girls in article 29.⁴⁰ The Platform for Action aims to speed up the implementation of Nairobi Forward Looking Strategies. From paragraph 112 to 130, the Platform for Action addresses violence against women as a

³⁸*Ibid.*

³⁹ Article 3 and 21 of Beijing Declaration, available at www.un.org.

⁴⁰*Ibid.*

human rights violation by stating that "violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms."⁴¹

The 1995 program covers the following areas affecting women: Political Participation, Economic Participation, Education, Health, Family Relations, Social Environment for the Development of Women, Women in Poverty, Exchanges between Chinese Women and Women of Other Countries, and Establishment of a National Women's Data Bank. In the section on major targets, it is stated that

"The general target for the development of Chinese women by the end of this century is: 'quality' of women as a whole shall be markedly improved and the equal rights of women stipulated by law in political, economic, cultural, social and family affairs will be further realised in the course of all-round participation in economic construction and social development and in the management of state and social affairs"⁴².

The targets for the development of women outlined in this document are also detailed. They include:

- the enhancement of women's political participation by employing them in leading governmental posts at all levels;
- an increase in the number of women in employment and governmental regulations of equal pay for equal jobs;
- the elimination of illiteracy among young and middle-aged women by increasing the percentage of females in education at all levels and in all categories; the reduction to below 2% of school-age girl drop-outs and of

⁴¹ FWCW Platform for Action, D. Violence against Women, paragraph 112. Available at www.un.org

those unable to attend schools; the elimination of illiteracy among 3 million women each year and entirely by the end of this century;

- the improvement of the health of women and the practice of family planning;
- tackling the problem of poverty by providing food and clothing for poor women by the end of this century;
- the improvement of laws and regulations for the protection of the rights and interests of women, for example, the launch of a legal literacy campaign;
- the expansion of exchange programmes with foreign women;
- the improvement of women's institutions at all levels, including the establishment of a monitoring system on women's conditions and a system of statistics to evaluate progress.⁴³

These targets aim to raise women's overall status. There are specific articles about women's position at home. Under the heading Major Targets, article 6 states:

The promotion of the establishment of civilised, harmonious and stable families with equality between husband and wife; to carry on the fine traditions of the Chinese nation, cultivate the socialist morale, and establish a relationship of equality, unity, love and mutual assistance within the family...to oppose bigamy or taking concubines.⁴⁴

Article 7 states "The effective ban of violence against women, criminal acts of abducting and trafficking women, and illegal activities of prostitution"⁴⁵ as

⁴² The Program for the Development of Chinese Women (1995-2000), part 4. Major Targets.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

another target. Thus the term "family violence" found its way into an official document in China for the first time. What's more, the program expressly provides that women's equal status in the family should be protected and domestic violence be firmly prevented. Article 11 reaffirms the government's pledge to "protect equal status of women in the family in accordance with law and resolutely curb family violence."⁴⁶

Although the term "family violence" finally appeared in an official document in China, this was only the beginning. There was neither a definition of the concept nor practical measures to fight against domestic violence. Many articles aimed to create a better social environment for women. For example, article 9 under Major Targets proclaimed the government's insistence on

the improvement of the social environment for the development of women; To advocate civil and positive view on women in society as a whole and cultivate a social morale of respecting and protecting women; educate women to display the spirit of self-respect, self-confidence, self-reliance and self-improvement.⁴⁷

Although providing an improved social environment under which respecting and protecting women is a social norm would help reduce domestic violence cases, advocating a positive view on women could only become a long-term strategy. Effective measures should be provided to reduce such incidents on the one hand, and arouse people's concern about the issue on the other. Only when a short-term strategy is combined with a long-term one can domestic violence be reduced gradually.

The distinction between violence in public and in private is clearly spelt

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

out in the 1995 program. The program puts much emphasis on legal solutions for the infringement of women's rights in the public domain. Article 10 demands a better enforcement of laws and decrees in defence of women's rights and interests, and severe punishment for those who break relevant laws and infringe upon women's rights by committing such acts as abduction, trafficking, abandonment, maltreatment and insulting women. As to private violence, such as domestic violence, this is not seen as the province of law enforcement, but rather it is classified in the category of the improving social environment for the development of women (article 11), which mainly counts on propaganda.⁴⁸

Article 10 stresses the importance of strengthening the legal awareness of women by means of carrying out "in an extensive and deep-going way publicity work on the legal system". It further asserts that "It is especially necessary to guide and help the broad masses of women to foster a solid legal concept and conscientiously apply law to safeguard their legitimate rights and interests."⁴⁹ By virtue of this article, establishment of legal consultation services for women is encouraged to protect the legitimate rights of women to sue and appeal. These are effective measures to curb infringement of women's rights. Legal consultation services emerged in China after the FWCW. These services are aimed at helping women solve their problems by channelling common problems to the departments and ministries concerned. The Women's Law Studies and Service Centre, the site of my fieldwork, is a successful example of

⁴⁸ Article 11 of the program stresses on improving social environment for the development of women by means of mass education activities to promote equality between men and women.

⁴⁹ Article 10 of the 1995 program.

how legal consultation services help abused women. This will be discussed in detail in Chapters 6, 7 and 8.

Article 10 also lays emphasis on raising the overall quality of law enforcement staff so as to "improve the work, to take in and handle the complaints made by women and guard against the phenomenon of shifting responsibility to others and long delay and indecision."⁵⁰

The final part of the program involves Monitoring and Appraisal. Article 16 and 17 are concerned with establishing organs to monitor the implementation of the program, meanwhile setting up data banks to assist monitoring and scientific decision making in such matters. Article 19 calls for the establishment of an evaluation system to identify problems in time and take actions as soon as possible.

The National Working Committee for Children and Women of the State Council continues to be in charge of the implementation of this program.⁵¹ The program serves as a general outline. Relevant departments of the State Council and lower level departments were required to draft detailed implementation plans in accordance with the principle of the program and incorporate it into local plans.⁵² A target management responsibility system was set up to evaluate

⁵⁰ *Ibid.*

⁵¹ The National Working Committee for Children and Women of the State Council was established in 1990 in accordance with Nairobi Forward Looking Strategy.

⁵² Article 13 of the 1995 Program states, "The National Working Committee for Children and Women of the State Council is responsible for the implementation of this program. The relevant departments of the State Council and social organizations, in light of their respective responsibilities, should formulate specific plans for its implementation. Article 14 states, "Implementation of the program is the unshakable and important duty of governments at all levels. The people's government of each province shall, in light of actual conditions, formulate its own plan for women and incorporate it to the local general plan for economic and social development and have it arranged and implemented in a unified and coordinated way."

the implementation of the program and monitor the performance of the main leading members.⁵³ This responsibility and evaluation system was intended to make the implementation of the program more effective. Article 15 requires governments at all levels to increase funding for the cause of women gradually. This requirement is of great practical significance, because departments and institutions related to women often face shortage of financial support.

The implementation of the 1995 program has brought about improvements in the position of women. In the five year period from 1995 to 2000, there was a steady increase of 0.8%, 2% and 1.1% in the enrolment of women cadres in the National People's Congress (NPC), the Chinese People's Political Consultative Conference (CPPCC) and the National Congress of the Communist Party of China.⁵⁴ Thirty-one provinces, autonomous regions and municipalities have appointed women to hold posts in the Party and government leading bodies.⁵⁵ The number of women employees increased by 1.1% since the implementation of the 1995 program, and more than 3.32 million redundant women workers were re-employed.⁵⁶ The size of the rural population living in poverty declined to 34 million and the percentage of women who are classified as poor women dropped from 70% in 1995 to 60% in 1999.⁵⁷ In urban areas, those living in poverty were provided with low-income subsidies. Three social security systems, namely the minimum living standard

⁵³ Article 14 of the 1995 program.

⁵⁴ Huang, W. "The Platform for Action Achieves Much" (2000) 43 *Beijing Review* 24-25.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

for citizens, the basic living guarantee for laid-off workers, and the insurance fund for the unemployed, have been established.⁵⁸ The level of women's education also increased and the gap between men and women narrowed. In 1998, the average period of education for women was 6.5 years, an increase of 0.4% from 1995; the gap between men and women in education narrowed from 1.7 years in 1995 to 1.5 years in 1998.⁵⁹

The program was drafted at a crucial period of the economic reform. As I have illustrated in Chapter 2, the economic reform has had a mixed impact on the situation of Chinese women. While a small group of women took full advantage of the economic opportunity to improve their overall status, the majority of women experienced a backward trend in their political, economic and cultural representation. The program served as a driving force for the government to promote the improvement of women's status in a new era.

4.3 The 1995 Program and the Platform for Action--- A Comparison

The 1995 program was drafted in response to the Platform for Action. However by comparing the requirement of the Platform for Action and the 1995 program, one can see that the implementation of the UN document on domestic violence is selective in China.

The Platform for Action requires states parties to take actions to curb violence against women. Articles 124, 125, 126, 128, 129, 130 set out measures

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

to fight against violence. Under article 124, the Platform for Action requires governments to adopt 19 measures to reduce cases of violence against women. Article 10 of the Program is drafted in accordance with this article. The Program pays particular attention to the supervision of law enforcement officials who implement relevant laws and punish those who "are not in strict observance of the law or are deliberately law-breaking".⁶⁰ Article 10 of the Program makes it clear that legal consultation services should be provided to Women, in line with article 124 (h) of the Platform for Action. Article 10 of the Program also stipulates that "(Relevant organisations shall) seriously investigate and deal accordingly with such criminal acts as infanticide, trafficking and persecution of new-born female babies and strictly forbid foetus sex identification". This accords with article 124 (I) of the Platform for Action. Article 11 of the Program is concerned with modifying the social environment for the development of women, reflecting the ideas of (k) of article 124 of the Platform of Action.

There are two features of the Program for the Development of Chinese Women (1995-2000), which meets the requirements of the Platform for Action. One is the strengthening of supervision of law enforcement officials, while the other is the raising of women's consciousness of the law. Compared with the requirement of the Platform for Action, the Program failed to meet the standard in the following ways. Firstly, Article 124 (d) of the Platform for Action requires the government to:

⁶⁰ The Program for the Development of Chinese Women (1995-2000), People's Daily, August 8, 1995. article 10.

Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasising the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators;⁶¹

However, the Chinese government did not draft any new laws relating to domestic violence until 2001 when the country amended its Marriage Law. Existing laws could only deal with cases of domestic violence involving serious bodily harm, leaving the majority of domestic violence cases unattended. Little work was done to review and analyse relevant legislation to ensure its effectiveness. Secondly, no official shelters were available within the five-year period, as required by article 125 (a). Although a few shelters emerged sporadically, they quickly disappeared one after other due to lack of support from the government. Thirdly, article 125 (h) requires governments and relevant organisations to disseminate information to assist abused women and their families. There were no brochures, information or posters in the public domain until August 2002.⁶² Even the Women's Law Studies and Service Centre (WLSSC), which lists domestic violence as one of its major concerns, did not have leaflets or brochures about domestic violence displayed during the period of my field-work from Dec.2000 to August 2001. Fourthly, article 125 (I) requires governments and relevant organisations to "provide, fund and encourage counselling and rehabilitation programs for the perpetrators of

⁶¹ Platform for Action, article 124, (d).

⁶² *People's Daily* reported on August 7, 2002 that public posters against domestic violence were put up in main streets in Beijing.

domestic violence" and promote research on the effects of such counselling.

There were no such programs available in China until Nov. 2001.⁶³

As Heyns and Viljoen argue:

"International enforcement mechanisms used by the treaty bodies appear to have had a very limited demonstrable impact thus far. This is partly due to the fact that the system has taken a number of decades to develop to its present level and partly the result of inefficiencies in the system (backlogs, overlaps, vagueness in findings, etc.) However, it is also true that focused and relevant concluding observations and views are still routinely ignored when domestic convenience so requires."⁶⁴

4.4 Implementation of Beijing Declaration and Platform for Action

Paragraph 323 of the Beijing Declaration and Platform for Action requires a state party to submit a report that includes information on measures taken to implement the Platform for Action. In the Third and Fourth periodic reports of China submitted to CEDAW in June 1997, the principle actions taken by the Chinese government were reviewed.⁶⁵

The State Council Working Committee on Women and Children held a conference on October 26, 1995. Attended by senior officials of central government ministries and provincial governments, the conference discussed the implementation of the Program and follow-up activities to the FWCW. The conference asked local authorities to draft plans for women's development in their areas and to combine the plan with their overall social and economic

⁶³ There were no reports available about perpetrators before Nov. 2001.

⁶⁴ Heyns, C. & Viljoen, F. (2001) *The Impact of United Nations Human Rights Treaties on the Domestic Level*, The Hague/London/New York: Kluwer Law International, p. 6.

⁶⁵ The report is available on the internet at the following web address:
www.un.org/womanwatch/confer/beijing/national/chinanap.htm

development programs. It also required local authorities to allocate adequate "human, material and financial resources for the implementation of the Program and Platform for Action".⁶⁶

Different ministries developed priorities according to their specific working areas. The Ministry of Organisation of the Central Committee of the Chinese Communist Party and All China Women's Federation jointly held conferences on selecting and training women cadres in February 1995, July 1998 and April 2001.⁶⁷ The 1995 conference drafted the plan from 1995 to 2000.⁶⁸ The working goal for the period was to promote at least one woman cadre in each provincial, autonomous region, and city level. For provincial, district and county level, it was agreed that half of the governmental institutions should have at least one woman cadre. Furthermore, it was stated that the Central Committee of the Chinese Communist Party and other administrative organs should have more women cadres. It was further recognised that there should be an increase in the number of women cadres with major responsibility. More women cadres were needed in industries, departments and enterprises, which employ females. The plan also recognised the need for more women cadres in communist party at village level and in village committees.

The 1998 conference reiterated the goal set in the 1995 conference and called for better implementation of the plan.⁶⁹ The 2001 conference set the goal

⁶⁶ The Third and fourth periodic report of China was submitted in 1997.

⁶⁷ *Working Handbook for Women's Federation* (2001), Beijing: Chinese Women's Publishing House, pp. 94-96.

⁶⁸ *Ibid.*, p. 94.

⁶⁹ *Ibid.*, p. 94.

to promote women cadres during the 2001-2005 period with a specific ratio for women cadres to reach 10%, 15% and 20% respectively in provincial, district and county levels by 2005.⁷⁰

The Ministry of Labour called on enterprises to take various measures to "develop areas and forms of employment suitable for women, provide more job opportunities for them and ensure that the rate of growth in women's employment is not lower than that for men."⁷¹ As has been discussed in Chapter 2, women's participation in economic activities shows signs of shrinking in the reform years due to the reorganisation of state-owned and collectively owned enterprises. Less participation of women in paid labour has been a cause of their deteriorating status at home. My fieldwork shows that the increasing income gap between a couple can lead to power imbalance in the family, which in turn is related to domestic violence. This point will be discussed further in Chapter 5.

The Working Committee on Women and Children under the State Council, together with the Beijing municipal government, sponsored a month-long rally from May 13, 1996 to promote the Platform for Action and maximise social participation. The rally attracted nearly 4,000 people.⁷² Other publicity-related activities followed and were aimed at advertising the event to the general public.⁷³

⁷⁰ *Ibid.*, p. 95.

⁷¹ Third and fourth periodic reports of China, Part III.

⁷² *Ibid.*

⁷³ *Ibid.*

The All China Women's Federation organised literacy and production-skills training courses and launched poverty-alleviation projects. The Federation set the goal of helping one million women out of poverty by the year 2000.⁷⁴ As it is universally recognised that women are poorer than men in general, the establishment of social security and poverty relief programs can benefit women more than men.

Women's federations at all levels also co-operated with relevant government agencies to eliminate illiteracy. The target was to eliminate illiteracy for 3 million women each year.⁷⁵ The Chinese government launched the "Hope Project" and the "Spring Bud Project" to support girls financially in completing their schooling.⁷⁶ The implementation of the Beijing Declaration and Platform for Action can be seen as a stimulus for the Chinese government to examine the side effects of its development model on women and re-adjust its gender policy. In Chapter 2, I have discussed the controversial impact of the economic reform policy on women. The FWCW and Platform for Action functioned as a reminder for the Chinese government to keep an eye on half of its population while concentrating on economic reform.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* There were 100 million illiterate women in China in 1999, according to Women's Anti-Discrimination Committee-1a- Press Release WOM/1092 419th Meeting (AM) February 1, 1999. The data is available on UN website. In 2002, the figure dropped to 55 million, according to a report on Legal Daily, September the same year.

⁷⁶ *Important Documents of the Fourth World Conference on Women (1998)* Beijing: Chinese Women Publishing House, p. 129.

4.5 Domestic Violence—Taking a Backseat in Anti-violence Campaign

In order to implement the Beijing Declaration and Platform for Action, the Ministry of Public Security focused its work on fighting against criminal acts of abduction, trafficking in, and abandonment of women. Its priority was the rescue of victims of abduction and the re-education of prostitutes.⁷⁷ A nationwide campaign was launched from April to July 2000 to fight against crimes related to the abduction and trade of women and children.⁷⁸

As the number of cases is on the increase and the areas involved are expanding, the Ministry of Public Security invested police power in fighting against these crimes.⁷⁹ Faced with well-equipped gangs with modern vehicles and mobile phones, the police force has also utilised new technology. Online inquiries and DNA tests have been used to raise efficiency.⁸⁰ DNA data banks are expensive to set up and maintain. Thus, the establishment of DNA data banks in a comparatively less developed country like China reflected the determination of the government to combat crime. Meanwhile heavy punishment for these crimes was administered. According to the 1997 amended criminal law, capital punishment can be imposed on those who are involved in abducting large numbers of women.⁸¹

⁷⁷ Third and Fourth Periodic Reports of China, Part III.

⁷⁸ Li, R.X. "Cracking Down on the Abduction of Women and Children" (2000) 43 *Beijing Review* 13.

⁷⁹ *Op. cit.*, n. 77.

⁸⁰ *Ibid.*

⁸¹ 1997 Criminal Law of PRC, article 240.

In comparison with the efforts made by the Chinese government in fighting against abduction of women, violence in families remains largely ignored. The issue is not mentioned in the Third and Fourth Periodic Reports of China, which covers China's implementation of the CEDAW convention from 1989 to 1995. This shows that the Chinese government only started to pay attention to domestic violence after the FWCW. The major work of the government in fighting violence against women was focused on eliminating the abduction of women and children as well as reducing prostitution.

Anti-domestic violence activities seemed to be scattered and less important. In 1994, the Beijing Chinese Social Workers Association Jinglun Family Science Centre opened the first domestic violence hotline. Within a year, there were only 517 telephone calls from abused women from all over the country.⁸² The Beijing Supreme People's Court opened the first domestic violence clinic in May 1995.⁸³ Disappointingly there were only 20 people registered at the clinic in 1995.⁸⁴ The total number of patients reached several dozen within two years.⁸⁵ The staff explained,

"The reason is not because domestic violence cases are reduced, it is because only a small number of people know this place due to lack of publicity. In addition to this, the majority of abused women do not know how to protect their rights. Some victims only come to our clinic when they are seriously hurt after being beaten several times."⁸⁶

⁸² Li, G.X. "Fighting Against Domestic Violence", *Yang Cheng Evening News*, February 19, 1997.

⁸³ Tang, H.F. "Why is Domestic Violence Service Unpopular?", *Beijing Youth*, April 11, 1997.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Despite the fact that 30% of married women complain about family violence, the above comment illustrates that the government has not done enough work either publicising supporting institutions or raising women's sense of self-protection.⁸⁷

Although no large-scale anti-domestic violence campaigns were run, work has been undertaken at city levels. In January 1996, China's first anti-domestic violence law was drafted in Changsha city, the capital city of Hunan Province in Southeast China. In June 1996, the first anti-domestic violence association was set up in Tangshan city in Northeast part of China.⁸⁸ Tangshan Women's Federation joined with the judicial bureau, the public security bureau, the procuratorial bureau, the court, labour union and civil administration bureau which supplied people to set up the association. The association set up 270 branches over the city.⁸⁹ Other anti-domestic violence associations at city level were established.⁹⁰ In October 2000, Beijing Women's Legal Aid Centre was opened to the public.⁹¹

In March 2000, the first government-funded neighbourhood project started to serve abused women in Beijing.⁹² The Neighbourhood Women Appealing Station has legal and psychological experts and volunteers. A hotline was inaugurated at the same time. In October 2000, Tianjin, a city in Northeast

⁸⁷ Gao, M. L. & Wang, X. J. (1998) *Violence in the Family--- Wife Beating*, Zhengzhou: Zhong Yuan Peasant Publishing House, p. 5.

⁸⁸ "Tangshan Set up the First Anti-domestic Violence Association", *Beijing Youth*, July 17, 1996.

⁸⁹ *Ibid.*

⁹⁰ *Liaoning Daily*, February 23, 2000, p. 9.

⁹¹ "Marriage and Family is still the Focus of Safeguarding Women's Rights", *Chinese Women Daily*, June 2, 2001.

⁹² Hu, J.H. "Neighborhood Women Appealing Station", *Legal Daily*, March 13, 2000.

of China, set up a collegiate bench to deal with domestic violence cases.⁹³ In March 2001, Shenyang, a city in the Northern part of China, opened a police hotline to tackle domestic violence cases. Local women's federations are normally in charge of these projects and services.

In June 2000, a research project entitled Domestic Violence in China: Research, Intervention and Prevention was initiated under the leadership of China Law Association.⁹⁴ This first nation-wide project has attracted experts from law, sociology, philosophy, psychology, medicine, the women's movement, NGO organisations, and governmental organs. The project aims to investigate the existing situation, causes, and harmful effects of domestic violence on abused women, so as to find measures to tackle the problem. The project also launched a series of pilot initiations. The goal of the project is stated as to

- (1) set up anti-domestic violence networks and information centres
- (2) draft anti-domestic violence regulations for the government
- (3) enhance anti-domestic violence consciousness in the general public
- (4) establish a theoretical framework based on Chinese culture and social background.⁹⁵

The project is funded by the Ford Foundation, NOVIB of Holland, SIDA of Sweden, and the Human Rights Centre of Oslo University. It is the first and only large-scale effort to tackle domestic violence in China.

⁹³ "Tianjin Set up an Anti-domestic Violence Collegiate Bench", *Legal Daily*, Oct. 18, 2000.

⁹⁴ *Beijing Youth*, Nov. 25, 2000.

⁹⁵ Hu, J.H. "Give Women a Non-violent World", *Legal Daily*, Nov. 27, 2000.

Although domestic violence in China emerged from the private to the public domain due to the FWCW, the issue was not seen as a human rights issue, which requires the government to adopt systematic and effective measures. Therefore China's anti-domestic violence efforts were limited to small-scale, city-level interventions that were geographically unevenly scattered before the 2001 Marriage Law was drafted. The attitudes of the relevant organisations, abused women's families, and women themselves to domestic violence reflect the government's lenient attitude to the issue. This will be discussed in detail in Chapters 6, 7, and 8.

4.6 The Program for the Development of Chinese Women (2001-2010)

On May 22, 2001, the State Council issued the Program for the Development of Chinese Women (2001-2010). It was based on the requirement of the Tenth Five-Year Plan of the National Economic and Social Development Outline of the PRC; it was drafted in consideration of the national conditions and the present situation of women and it took into account periodic and long-term goals of women's development. Accordingly, the Chinese government set major objectives for women's development in 2001-2010.⁹⁶ Meanwhile the program takes full consideration of the 12 crucial areas listed by the Beijing Platform for Action.⁹⁷ On the basis of the achievements of the Program for the Development of Chinese Women (1995-2000), the program lists 6 areas for priority development. These are: women and economy, women's participation in

⁹⁶ The Program for the Development of Chinese Women (2001-2010), *China Women's News*, May 31, 2001.

⁹⁷ *Ibid.*

decision-making and administration, women and education, women and health, women and law, and women and the environment.⁹⁸

The general targets of the program are to: implement the basic state policy of equality between men and women; promote women's full participation in the economy and social development; realise equality between men and women in political, economic, cultural, social, and familial areas.⁹⁹

Section 5 refers to women and law. In this section, there are more detailed articles regarding violence against women. Compared with the 1995 Program, these articles are more practical. They are not simply slogans, but measures to tackle the problems that women face. For example, article 3 in section 5 stipulates that "To protect women's human rights, any kind of violence against women is forbidden".¹⁰⁰

Under policies and measures, there are four ways to reach this target.

1. *Legislation.* Embody the sense of gender, and regulate social behaviours that have negative effects on women's development in national laws.

Strengthen and perfect legislation in protecting women's legal rights, on the basis of the Constitution of the People's Republic of China and Law Safeguarding Women's Rights and Interests of the People's Republic of China. Much attention must be paid to women issues in the process of perfecting relevant laws and regulations in order to guarantee that women enjoy equal rights with men in political, economic, cultural, social and

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

family life.¹⁰¹ The new Marriage Law passed in April 2001 is the fruit of the program. Domestic violence is outlawed in the new Marriage Law.

2. *Jurisdiction and implementation.* Strengthen legal protection and implementation of laws. Effectively prevent and fight against criminal acts that infringe on women's human rights and property rights, reduce rape and abduction cases. Prevent and fight against domestic violence. Establish and perfect the system of jurists invited from women's federations to implement the principle of equality between men and women, to safeguard women's legal rights, and guarantee justice in the trial of cases related to women.¹⁰²
3. *Publicise legal knowledge.* Put publicising women's protection laws into the outline of publicising national laws. Enhance women's sense of law. Raise women's capability of safeguarding their own rights.¹⁰³
4. *Legal services and legal aid.* Establish legal aid systems so as to provide all kinds of legal services and social help. Enhance reception systems. Provide legal consultation and legal service so as to process appeals of women victims. Adopt various measures to provide legal, medical and psychological services to women victims of violence. Women's federations, workers unions and communist youth league should safeguard women's legal rights within their responsibilities.¹⁰⁴

The above measures for fighting against violence, including domestic violence, offer practical solutions. Providing legal services to women is one of the best

¹⁰¹ Op. cit. n. 96. Section Five — Women and Law.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

ways to help abused women. Medical and psychological services are essential for abused women to recover and possibly walk out of the abusive relationship.

Although there is no clear definition of the responsibilities of women's federations, workers unions and communist youth leagues, they are appointed to be responsible for intervening in domestic violence cases.¹⁰⁵ This can be perceived as progress, because the 1995 Program only contained the slogan of fighting against family violence without adopting any operational measures. Another progressive step in the 2001 program is the establishment of jurists invited from women's federations to guarantee judicial justice in judging cases related to women.¹⁰⁶ This practice introduces the sense of social gender into the judicial system, which will benefit women, because the sense of gender will help judges view cases from a feminist perspective.

In the area of organisation and implementation, relevant departments under the State Council must report annually the result of implementing the program to the National Working Committee for Children and Women of the State Council. The local working committee for children and women must also establish a similar reporting mechanism.¹⁰⁷ This supervision mechanism is intended to guarantee the successful implementation of the program.

In the area of monitoring and appraisal, article 2 states that it aims to

"Establish a national and provincial monitoring system on women's status and formulate feasible and scientifically defined plans so as to monitor

¹⁰⁵ *Ibid.*, Section five, Policies and Measures, article 4.

¹⁰⁶ *Ibid.*, Section five, Policies and Measures, article 2.

¹⁰⁷ *Op. cit.*, n. 96.

women's development in an all-round and dynamic way."¹⁰⁸ In addition to the monitoring system, a mechanism of periodic reporting and appraisal is to be established.¹⁰⁹

Article 4 stipulates that institutions to be established under the National Working Committee for Children and Women of the State Council are responsible for supervising and examining appraisal plans so as to draft responding strategies based on appraisal results.¹¹⁰

Compared with the 1995 Program, the 2001 Program has made some progress in providing specific measures to combat domestic violence. As a matter of fact, only in this program does the Chinese government take actual actions to fight against domestic violence. In the 1995 program, the government acknowledged the existence of domestic violence without taking further action. Another characteristic of the 2001 program is the establishment of an appraisal mechanism and relevant institutions. This is a practical step for the implementation of the programme.

Conclusion

In this chapter, we have reviewed the impact of the FWCW on the Chinese government and women. Preparing for world conferences became a mechanism for making governments implement plans and recommendations put forward by earlier UN conferences. The FWCW pushed China to examine and improve its work on women so as to meet international standards. This has led to the

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

acknowledgement of the existence of domestic violence in China and the drafting of two programs for the development of Chinese women. By making comparison between the two programs and UN resolutions, we can see the gap between UN documents and their implementation by China as a state party. From the 1995 Program to the 2001 Program, China has taken measures to improve its work in implementing UN resolutions to fight against domestic violence. Of particular significance is the fact that the government emphasises legal measures to tackle domestic violence. However, to what extent has awareness regarding domestic violence resulted in people considering it an abuse of rights as a result of the Beijing Conference? Has this awareness resulted in increased expectations on the part of abused women regarding service provision? Have those expectations been met? How are the written articles implemented and how effective they are? In the next 4 chapters, I aim to answer these questions by analysing my fieldwork data.

Chapter 5

Research Settings and Methodology

This chapter provides a detailed description of the empirical work I carried out on domestic violence in China. It outlines the work of the Women's Law Studies and Service Centre (WLSSC) where the bulk of the research was undertaken. It also provides background information of institutions related to abused women. Gathering data was achieved through participant observation at the WLSSC as well as by drawing samples of women who had experienced domestic violence. My fieldwork was carried out between December 2000 and September 2001. It consisted of three elements: namely participant observation in WLSSC in Beijing, in-depth interviews with abused women and interviews with people from other institutions. The following provides the rationale for my choice of research methods and strategies.

5.1 The Women's Law Studies and Service Centre (WLSSC)

The Fourth World Conference on Women held in Beijing in 1995 was the direct stimulus for the establishment of the WLSSC. During the conference, delegates from all over the world voiced their concerns about how to protect women's rights, which aroused a sympathetic response from the Chinese side. After the conference, China drafted the Program for the Development of Chinese Women (1995-2000). Article 10 of the program makes it clear that legal consultation services should be provided to women. Yang Dawen, Ma

Yinan and Guo Jianmei, the three founders of the WLSSC, were determined to establish an organisation that was specifically aimed at assisting women. All three women are law professors who devote themselves to the cause of protecting women. They participated in drafting the Law Safeguarding Women's Rights and Interests of the PRC. In order to draft the law, they went to different parts of China to collect information. Such investigations revealed a true picture of the existing situation of Chinese women. They arrived at the conclusion that the rights of Chinese women were easily infringed and that they needed urgent help. During the Fourth World Conference on Women, these academics conducted a project called "problems and countermeasures in the implementation of the Law Safeguarding Women's Rights and Interests of the PRC". The project, sponsored by the Ford Foundation, provided them with more opportunities to inspect foreign countries as well as many provinces in China. They realised there were a lot of work to be done in the area of protecting women's rights and decided to establish a legal aid centre.

The WLSSC works with the objectives of "providing legal aid; protecting women's rights and interests; safeguarding legal justice; studying the issues relating to women's rights and interests; promoting the development of legal aid; and the protection of women's rights and interests in China."¹ The main tasks of the WLSSC fall into three categories: providing legal consultation, handling cases and conducting research. In practice, the three tasks complement each other. By providing legal consultation, staffs of the

¹ The Five Year Report of WLSSC.

WLSSC acquire first-hand information and material about the status of—and the need to protect—women's rights and interests in China. Handling cases not only helps under-represented women but also brings the talents of the staff in the Law School of Peking University into full play. Case research is also backed by the academia of the Law School and results are used to promote the cause of women's rights and interests protection through a high-level channel that Beijing University maintains with the policy making bodies. By fulfilling the three tasks at the same time, the WLSSC has set up a model to run a legal aid organisation based at universities.

The development of the WLSSC has experienced three phases. In its early days, the WLSSC provided legal help for everyone who needed it. Consequently, every lawyer and member of staff in the centre became overloaded. It soon became evident that accepting clients indiscriminately did not help the WLSSC establish the reputation it expected. Hence, it was decided that a tactical shift towards focusing on handling representative cases of social significance would be advantageous. However, given the current difficulties such as financial shortage and the lack of qualified personnel, it was impossible for the centre to provide legal aid for everyone in need. Instead priority was given to cases of social significance. Undertaking such cases enabled staff at the centre to pick out those problems which were judged to be deeply rooted in the nation's legislative and judicial fields. The media was mobilised to cover how these representative cases were handled. Media coverage was instrumental in establishing comments and suggestions that

would eventually push the government toward reform. This tactic ensured that the centre received recognition. The aim had been to trigger off a chain reaction in society by solving the same kind of cases, thus providing legal aid for more people in need and on a larger scale. Hence in early 1997, distinct changes were made in the charter of the WLSSC. The readjustments placed greater emphasis on two main tasks, for it was agreed that the centre would

- a. pay more attention to cases pertaining to the violation of women's rights and interests, which are considered to be representative and of social significance, all the while providing legal aid for women litigants whose rights and interests have been seriously violated;
- b. study legal issues related to women's rights and interests, which are representative and may exert significant social influence. Then, the centre puts forward suggestions to government departments concerned so as to promote women's law studies and legislation;

After the adjustment in 1997, the centre gradually established its wider reputation. Since entering its third stage in the same year, the centre set up three priorities for providing legal aid, which are still operative today. It promised to assist:

- a. female litigants who are very poor and whose cases are typical;
- b. difficult cases that involve serious infringement of women's rights;
- c. new types of cases emerging from the economic reform era;

The doctrine of the centre is to handle cases that are challenging and symbolic. When such cases are gathered, relevant social and judicial problems

will emerge. By conducting research on such cases, the centre aims to unravel problems inherent in the drafting and implementation of laws so as to provide suggestions to the relevant judicial bureaux to stimulate the improvement of the judicial system

5.2 Participant Observation in WLSSC

It is not easy for an individual researcher to find a fieldwork base in which she can undertake social research in China. If one goes to an institution, introducing herself as a PhD student wishing to conduct research work, the answer usually comes back in the negative. The reason for my choosing this particular centre is that it is a comparatively open unit. Not only does it serve as a base for Beijing University Law School students to put their legal knowledge into practice, but the centre also provides a window to the international world. It has already established its reputation in providing legal service and legal aid to women all over the country.

Participant observation is a natural way to approach research subjects and it is among the least intrusive of research techniques. Compared with more structured methods, this method has the flexibility to yield insight into new realities, or new ways of looking at old realities.² When it is combined with other research methods, such as in-depth interviews, which I used in my fieldwork, it provides an alternative source of data collection to enhance

² Adler, P.A. & Adler, P. "Observational Techniques" in Denzin, N.K. & Lincoln, Y.S.(1998) *Collecting and Interpreting Qualitative Materials*, London: SAGE publications, pp. 87-92.

crosschecking or triangulation.³ Direct observation, when added onto other research yielding depth and/or breath, enhances consistency and validity.⁴

I spent the initial stage of my fieldwork at the WLSSC reading files in order to pick up cases of domestic violence. Meanwhile, I observed closely the daily routine of the centre and kept a diary. I tried to establish a relationship of trust with every one in the centre in order to lay a good foundation for my later interviews. The centre, as I have already stated, is a legal aid provider attached to the Beijing University. My daily job was to provide legal service to women either face to face, or by answering telephone calls. In addition, I kept a written record on individual consultations. Participant observation enabled me to understand the manner with which staff at the centre dealt with different kinds of people.

Having established a working relationship with everyone at the centre, I then expressed my interest in domestic violence cases and voiced my desire to be involved in any activities related to these cases. As a result, whenever there was a domestic violence consultation, I would be informed and invited to assist the member of staff by taking notes and witnessing the consultation process. I was also allowed to investigate domestic violence cases alongside lawyers in the centre. Participant observation provided me with first-hand information about domestic violence cases, the actual situation of abused

³ Douglas, J. D. (1976) *Investigative Social Research: Individual and Team Field Research*, Beverly Hills, London: Sage Publications. Denzin, N.K. (1978) *The Research Act: A Theoretical Introduction to Sociological Methods*, New York, London: McGraw-Hill.

⁴ Adler, op. cit., n. 2, at, p. 90.

women and their experiences of relevant organisations. Participant observation was a particularly useful method to discover how relevant organisations treat abused women.

5.3 The Work of the WLSSC

5.3.1 Organisation of the WLSSC

The WLSSC has four departments operating under an overall working administrative commission, consisting of one senior consultant, the director of the centre, the executive director and the deputy director. The four departments deal respectively with office administration, legal consultation, litigation and research. The consultation department deals with the helpline, answering general inquiries, writing letters, selecting representative cases and analysing the results of consultations. The litigation department deals with lawsuits taken by the WLSSC, while the research department is in charge of undertaking research work on individual cases, organising seminars and preparing reports. The office administration is in charge of daily work organization, including arrangements for staff to work on different shifts, maintaining files and contacting relevant agencies and organisations.

Judging from the structure of the centre, it may seem to be a complicated set up. In fact, the centre only has six full-time and eighteen part-time staff. To fulfil three major tasks, it is obvious that the centre has a serious shortage of working staff. Although in theory the centre is divided into four

departments, in actual practice staff do various chores. Everyone except the secretary deals with legal cases. To make up for staff shortage, the centre takes law students as volunteers. All the staff are well qualified. They are university professors, associate professors and postgraduates. Most of the working staff also has dual status. They are lawyers attached to law firms as well as being consultants working for the WLSSC.

As a non-governmental legal aid agency, the centre is unable to provide its staff with better pay. This explains why the centre has to face the problem of staff shortages. Meanwhile, the social environment is not helpful to the development of the centre, because most of the lawyers are busy in dealing with cases that could bring more income to them. To many people, the misconception is that only less capable lawyers involve themselves in low paid legal aid work.

5.3.2 Caseload Analysis

From December 1995 to October 2000, the centre provided legal service to 7000 persons—an average of 5 to 6 people per day.⁵ Among its visitors, 92.3% were women, and 60% of the consultation pertained to marriage and family affairs.⁶ The centre acted as agent for 260 cases during this period of time, among which 104 cases concerned marriage and family issues.⁷ The centre started to pay specific attention to domestic violence cases in 1998. It

⁵ The figure comes from *The Five Years Consulting Report of the Center*.

⁶ *Ibid.*

⁷ *Ibid.*

began to separate domestic violence cases from other family cases in 1999. According to my calculation, in 1999 there were 91 cases filed by the centre, among which 12 involved domestic violence. In 2000, among 112 filed cases, 22 were on domestic violence. In the first 6 months of 2001, there were 65 filed cases, among which 17 involve domestic violence.⁸

There are three ways for the centre to serve its customers, namely face-to-face service, telephone service and by written advice. Statistics from the centre show that each year the centre provides legal service to 1,300 persons, among which telephone consultation accounts for 80% of all cases. 15% come for consultation in person, 4% ask for help by writing letters, and less than 1% use email.⁹ In terms of types, 60% are marriage and family disputes, 3% economic disputes, 15% infringement of rights, 2% administrative disputes, 5% criminal cases, 10% labour disputes and 5% other cases.¹⁰

In order to present a comprehensive picture of the work of the centre, I examined recorded materials for the first 3 months of 2001. The results are shown in Table 5.1 from which it may be deduced that family and marriage disputes made up 51% of the total number of recorded consultations in this period. This illustrates the fact that one of the major tasks of the centre is to provide legal service to individuals with family problems.

⁸ The figure is based on the files kept in the center.

⁹ The figure comes from the work report of the center.

¹⁰ *Ibid.*

Table 5.1 Recorded Consultations in the First Three Months of 2001

Time	Total Number of Recorded Consultations	Consultation Involving Family and Marriage Disputes (Number)
Jan. 2001	31	10
Feb. 2001	28	20
March 2001	141	72
Total	200	102 (51%)

Table 5.2 Specific Areas of Family Disputes in WLSSC Consultations January – March 2001

Type/ time	Jan. 2001 Total number (10)	Feb. 2001 Total number (20)	March 2001 Total number (72)
Divorce	5	13 (1 d.v. case)	40 (9 d.v. cases)
Raising children	0	5 (1 d.v. case)	7
The third party	3 (1 d.v. case)	0	7
Bodily harm	0	0	4 (1 d.v. case)
Housing	2	2	14 (3 d.v. cases)
Total number of d.v.	1	2	13

Note: d.v. represents domestic violence.

5.3.3 Typologies of Complaints Made to the WLSSC Involving Domestic Violence

There are many types of complaints made to the centre that can involve domestic violence. Quite often litigants do not complain about being beaten, but consult about the procedure for divorce, the right of fostering children, the third party in a marriage, housing problems, and bodily harm.

a) Divorce consultations

About 65% of consultations on marriage issues focus on divorce procedures.¹¹ When women state the reasons for seeking divorce, they may cite excessive drinking followed by gambling resulting in violent behaviour. Compared with 6.2% of divorce cases filed in 1998, 16.3% of divorce cases in 1999 involved domestic violence.¹²

b) The right to fostering children

Some women come to the centre for consultation on claiming the right to foster children. These women were either divorced or in the process of filing for divorce. When they discuss their marriage and children, they cite violence within the marriage as one of the reasons for its break up.

c) The third party problem

A substantial number of women complain about third party relations in their marriage. In 1998, about 15.1% of marriage and family cases concerned third parties. These women, noticing their husbands' change due to their mistresses, wanted the third party to be punished. However there are no laws to punish the third party, and the centre can offer little assistance in this respect. Third party problems are often associated with domestic violence.

¹¹ The figure comes from the five-year report of WLSSC.

¹² *Ibid.*

d) Bodily harm cases

Some women complain about being hurt by their husbands. They seek advice on how to stop the violence and how to punish the abuser. These are bodily harm cases caused by domestic violence.

e) Consultation about housing problems.

Housing problems are also a frequent issue for consultation at the WLSSC. In 1998, for example, consultations on housing consisted of 19.8% of the total figure in the year. Housing problems occurring in divorce cases reached 64.8%.¹³ As the common practice in China is to allocate housing to men, when a couple decides to end the marriage, how to divide the house becomes a major issue. Such an allocation system leads to the fact that abused women often have no other place to stay when they are beaten. This also leads to the problem that a divorced couple has to stay in the same apartment. For abused women, this situation is not only embarrassing but also dangerous. Abused women often complain about losing their share of the apartment, because violence continues after divorce.

5.3.4 Type of People Making Complaints

There are a variety of individuals who make complaints about domestic violence. In terms of age, they vary from those in their 20s to those over 70. In terms of economic situation, they also vary from penniless poor women to

¹³ *Ibid.*

well-to-do rich women. Although consultants on duty are required to write down the name, age and occupation of customers, they often ignore making notes or when they do make very simple notes that have minimal research value. In 2000, the recorded number of consultations was 356, among which 29 cases were seen as involving domestic violence.¹⁴ Normally there are two lawyers and one law school postgraduate student available for consultation. Customers have to queue for service. Under such circumstance, consultants often neglect to make notes in order to save time.

In terms of education level and economic situation of the litigants, my observations indicated that there are three types.

- (a) Well-educated litigants. These are university graduates. They can write an indictment and defend themselves in court under the supervision of lawyers. This group of people has a solid economic background. They are not entitled to legal aid.
- (b) Litigants with high school education and income. Their problems mainly concentrate on marriage and other civil cases. They not only require lawyers to provide detailed legal knowledge and assistance to write indictments but also need guidance to defend themselves in court. It is not very difficult to help them successfully.
- (c) Litigants with the lowest social status. This group of people includes waitresses, women in the countryside, unemployed women, housewives and handicapped women. Due to their lower social status and lower

¹⁴ The figure is far from the actual figure as the researcher noticed that each day there were about six people asking for legal advice in person and there were ten phone calls on average.

education, their cases are the most difficult ones. Most of such cases have the characteristics of complexity, being long lasting, and having little hope of success. Often, they have difficulty understanding legal terms. Meanwhile, as they may have tried in vain to appeal for a long time to resolve their problems, some of them have psychological problems. Therefore to solve their problems successfully, a lawyer needs to have knowledge of law, psychology, and sociology. The lawyers in the centre provide help in all aspects, including explaining legal terms and legal procedure, writing indictments for them, and acting as agents. This group of people are economically disadvantaged and as such are candidates for legal aid.

5.4 WLSSC and Domestic Violence

One of the major tasks of the centre is to assist abused women. According to statistics in 2000, the centre acted as agent in 27 domestic violence cases.¹⁵ As there are many cases that belong to family and marriage matters, it becomes important to define domestic violence cases. There are two basic principles: one is to listen to the litigants account, observe whether she has received injury, and judge from her behaviour whether she has been abused psychologically. If the litigant complains about being beaten constantly or seriously, it is categorised as a domestic violence case. If the litigant shows

¹⁵ The centre keeps records of cases that it acts as agents. Domestic violence case is under the category of divorce cases.

depression and signs of inferiority, she is regarded as having received psychological abuse. Some litigants bring photos to prove they were beaten. Another principle is to ask whether the litigant reported her case to the police, since police records are important evidence for lawyers to help litigants.

In addition to the above two principles, the centre decides whether it can act as an agent for litigants on an individual basis. The decision is closely linked with the economic condition of the abused. The poorer the litigant is, the more likely it is that she will get free legal service. The decision is also linked with the case itself. If the litigant is seriously hurt, or the abuse has continued for years, it is more likely that the litigant will get help. Another objective element is funding. Due to limited funding, the centre has to select cases in accordance with its financial capability. Therefore only limited numbers of abused women get legal aid from the centre.

The following are some examples of ways in which the WLSSC assists victims of domestic violence.

(a) Telephone Consultation

A thirty years old saleswoman phoned, saying her husband beat her so seriously that doctors had to put ten stitches in her arm. She asked how to trace his responsibility and how to divide the property. Her husband threatened to keep her away from their child and occupy the house if she dared to file for a divorce. The advice of the centre was to get a certificate from a legal medical expert. If the injury was up to the standard of light

bodily harm, she could file for a criminal private prosecution incidental civil. If the injury was not up to the standard of light bodily harm, she could ask for civil compensation, which includes the medical fee, transportation fee and compensation for her absence from work. She was also advised that the property would be divided equally among the couple according to the law.

(b) Face to Face Consultation

Many women choose to consult lawyers in person. They come from different provinces all over China, some even have to undertake several journeys for this purpose. On one particular occasion, a woman walked into the centre very slowly, her movement restricted because her left arm and leg could not move freely. Judging by the dull look in her eyes, she appeared to be suffering from depression. Her face was wax yellow, and although she was barely over forty, her appearance gave the impression that she was over fifty years old. During 11 years of marriage, I subsequently learned, she had suffered from nephritis, cervicitis, cervical erosion, and cerebral embolism. She told me:

The first year I got married, he started to beat me. I was sent to hospital three times. He broke my rib. He put his hand into my vagina. Once he cooked a meal for me, but by midnight, I vomited and twitched. He did not show any sympathy, but beat me. I was diagnosed with cerebral embolism. That year I was only 34.

This woman had already been divorced. She had been to many places for justice, such as local courts, local people's congress, local women's federation and the police station. She wanted to sue her former husband for offences of

bigamy and maltreatment. She wanted to get more money to foster her children, as she had no job.

This woman visited the centre on several occasions. She was told that she needed to supply medical certificates diagnosing her diseases, together with all other written materials available. Although her case was a typical domestic violence case, the centre refused to act as agent for her due to several facts. Firstly, as she lived in Hebei Province (not in Beijing), it was expensive for lawyers to travel in order to get evidence. Secondly, she had been divorced for a year, thus it was not easy to overrule the court's decision. Furthermore, her evidence was mainly her own statement, which might not be convincing in court. Thus, unfortunately the centre could not provide her with help.

(c) Written Consultation

Some people, the majority of which live in other provinces, write to the centre for advice as it is expensive and inconvenient for them to ask for advice in person. One woman wrote:

Dear lawyers:

I am a 26 year-old woman. My husband often beats me. He hurts me with hot water. He beats me with a wooden stick. Could you please tell me what I should do?

The lawyer's reply was as follows,

Dear Madam: I am very sympathetic to your problem. My advice is that you can sue him for abuse. You need to collect evidence, for example, after he beats you, you take photos which you should date. You can also ask doctors to write down a detailed description of the wound. If he beats you seriously, you should

phone the police. You can ask the police to write a letter for you in order to get a medical expert certificate. When he beats you, you can ask your neighbours for help. Your neighbours can act as witnesses if you file for a divorce. We hope that you can fight against violence in your family. Remember the most important thing is not keeping it within the family. Whenever he beats you, ask for help.

If you have any questions, please do not hesitate to contact us. We are always here to help you.

(d) Actions Taken to Domestic Violence Cases

The centre takes several measures to deal with domestic violence cases. The measures can be categorised into three types:

1. *The litigant wants to get a divorce.* If the litigant has been found to have light injuries, the lawyers in the centre will ask whether they would like to seek criminal punishment. Light injury can become a major reason for litigants to file for a divorce. The centre takes the certificate of legal experts as solid evidence to get a favourable result for litigants. Meanwhile the centre also suggests that litigants report the violence to their neighbourhood committees, the police and women's federations so as to get more evidence.
2. *The litigant does not want to seek divorce.* The lawyers in the centre will judge individual cases and analyse problems for litigants. If there is a third party involved in the marriage, the purpose of the violence may be to force the woman to end the marriage. In this case, the lawyers in the centre will advise litigants to file for a divorce. If the violence is the result of the husband's bad temper or financial

problems, the lawyers in the centre will advise litigants to seek help from relatives.

3. *If a litigant has been beaten disabled by the use of violence*, the lawyers in the centre will investigate the case, collect evidence and bring the perpetrator to trial.

Finally, let me conclude the analysis of the work of the WLSSC on domestic violence cases by describing in detail one particular case.

A thirty-five year old villager Zhang Xiulan lived in the outskirts of Beijing. Ten years ago, she got married to Wang Shugen, a man living in the same village. As Wang Shugen had suffered from some illness, Zhang Xiulan did not have children for several years after the marriage. Then Wang had his illness cured after seeing many doctors. Zhang gave birth to a boy in November 1996. Wang suspected that the child was not his own son. Since then, the man and his wife began to quarrel from time to time. At about 8:00 o'clock on the evening of September 18, 1998, Wang came home after work. Wang beat Zhang for the reason that she came home too late. He pushed Zhang to the ground, rode on her body and pinched her neck. Neighbours rescued Zhang. Wang splashed a bottle of gasoline onto Zhang's face and body while Zhang was changing her clothes. He then lit the fire with a lighter. Zhang was out of danger only after the hospital made serious efforts to rescue her. When Wang recovered, she entrusted her elder sister to report to the police. The person on duty at the local police station refused to interfere. He said, " It is a family quarrel. Wang suspected his wife of having an affair with

7 Zhang

another man and burned her. The public security department is not responsible for this." Zhang's sister came to the WLSSC for legal aid. The lawyer of the centre took it as a serious case of domestic violence and provided them with legal aid. After more than 30 days of hard work, the centre finally succeeded in persuading the police to arrest Wang. On April 14, 1999, Wang was sentenced to 14 years in prison and was deprived of political rights for three years. Wang was also ordered to pay more than 80,000 Yuan to Zhang as compensation. The legal judgement has already taken effect.

The efforts of the centre to help the victim in this particular case can be summarised as follows.

- They immediately contacted the local public security department and its higher public security organs asking for the criminal suspect Zhang Shugen to be arrested.
- Two lawyers in the centre went to the local police station. They pointed out that the case was not only one of domestic violence cases but also a matter of serious bodily harm. Furthermore, they argued that such a case should not be excluded from the category of criminal punishment on grounds of being a family matter. However, the local police refused to arrest the abuser, claiming that if the husband was arrested, nobody would take care of the victim.
- The two lawyers, with the help of the local women's federation, applied for a medical expert certificate for the victim. The result showed 30% of the victim's face, arms, and body had IInd and IIIrd

degree burns and 10% IIIrd degree burns. The Beijing Medical Legal Expert Certification Centre classified it as heavy injury. With such an authoritative certificate in hand, the two lawyers went to the local police station to ask for the arrest of the abuser again. The local police station did not arrest the abuser according to relevant laws; on the contrary, it required the lawyers to find witnesses.

- The lawyers took witnesses to the police station. The police said they could not arrest the abuser because their director was not at home. The two lawyers knew that the local police station was delaying. They reported the matter to the bureau of local police. Under the supervision of its seniors, the local police arrested the abuser.

Thus, it can be argued that the WLSSC provided the following services in this case:

- (a) The centre contacted the hospital where the victim was under treatment and collected evidence. Meanwhile they comforted the victim and encouraged her. The lawyers talked with the doctor in charge. The doctor provided valuable information. The lawyers also took photos of the victim. These photos became important evidence later.

The victim's sister told the lawyer that the victim wanted to commit suicide, because she was not sure whether her husband could be punished. Each time she asked her sister to report to the local police, the answer was 'the person in charge was not available'. She lost confidence in the police. She told her sister, "if they continue to tell us it is a family matter, when I

get out of the hospital, I will burn him. Since nobody cares about my family affair, I will punish him myself." Knowing all this, the lawyers talked with the victim patiently, explaining to her that her husband would be punished by criminal law eventually. The victim calmed down and recovered from depression gradually.

- (b) The lawyers went to the victim's house, hoping to take photos of the scene. However, the scene of the crime was damaged due to the fact that the criminal was at large for 45 days after the crime. The lawyers talked with the two witnesses who had sent the victim to hospital and collected valuable evidence.
- (c) The two lawyers contacted relevant departments, asking them to issue the power of attorney. They also asked a legal medical expert to pay a home visit in order to appraise the condition of Zhang Xiulan.
- (d) The lawyers wrote a draft of the plaint for the victim, asking for criminal punishment as well as civil compensation. The judge declined civil compensation, stating that as they were still a couple, it was meaningless to file for compensation. All the judges in the court took the view that civil compensation within a marriage made no sense. One of the lawyers was previously employed as judge in Beijing intermediate people's court. She insisted on such a judgement. The judge was finally convinced and stated that the victim should be compensated the sum of 80,000 Yuan.
- (e) The two lawyers appeared in court to act as the victim's attorneys, because she did not want to appear in court. One reason was that she did not want

to face her husband again. The second reason was that she did not want to expose herself to the public. In order to protect the victim from being victimised any further, the two lawyers insisted on processing the case in her absence.

5.5 The Interview Study

5.5.1 Choosing the Sample

In addition to being the base of my participant observation, the WLSSC also provided me with samples of abused women for interview. Selecting interviewees was a long and painful process. I used three ways for selecting interviewees, namely to choose from completed cases in the centre, to contact abused women for whom I had provided consultation, and to select from the registration forms in the centre.

While reading the files, I wrote down relevant information about domestic violence cases, including personal information, the main causes of violence, and contact numbers. At the same time, I had a rough idea what questions I should ask individual interviewees as different cases had different personal background, causes of violence, and ways of dealing with relevant organisations. I listed the candidates and asked lawyers who had dealt with the cases to contact them. As lawyers had provided legal aid to these candidates, they were quite grateful to them, therefore I encountered less difficulties in locating them. They were quite co-operative during the

interviews. However the number of interviewees selected in this way only met half of my target figure of 30.

Another good resource was to contact those for whom I had provided consultation. These women were quite co-operative, because they considered me as one of the employees of the centre who could provide them with help. They found it helpful to talk to me and to discuss alternative ways of dealing with the violence in the family. Therefore they were willing to talk to me several times.

The most difficult group consisted of those women who I selected from the registration forms in the centre. They either came to the centre for help once or twice or contacted the centre by telephone. Most of them were not willing to be interviewed for the following reasons:

- (a) They did not want to irritate their husband by having an interview
- (b) They did not want to recall their terrible past as they had already been divorced
- (c) They judged that the centre had not helped them, so they regarded this interview as a waste of their time
- (d) They were not proceeding in their claim for divorce, so they wanted to keep their visit to the centre as a secret.

The limitation of the sample selection lies in the fact that it only reflects the actual situation of a small number of women who try to sort their problems out. Those are the women who want to find a solution for the violence, to end the abusive relationship or who are forced by the perpetrator to end the

marriage. Some women have been left out of the research. These are the women who either dare not file for a divorce, have no intention of divorcing, or else do not dare to ask for legal advice, or in some cases do not regard their problems as an issue that can be addressed through legal channels.

The research was targeted at married women who have been in an abusive relationship for a minimum of one year. I chose married women as my sample because a large majority of women in China are registered as married. According to statistics in 1994, China registered nearly 10 million marriages each year while there were about 2 million illegal marriages annually. Of those illegal marriages, more than 80 percent were early marriages and the rest were cohabitation, arranged or mercenary marriages, close relative marriages and situations of bigamy.¹⁶ Therefore choosing married women as the research target makes the results closer to the actual situation that the majority of abused women face. Another reason for choosing married women was that research by Dobash and Dobash has shown that quite often only after the couple have been married does the abuse start.¹⁷ The minimum one year limit which I imposed on the sample was intended to ensure that interviewees had a clear idea about the pattern of the abuse, and that they had thought about the kind of help they expected to receive.

5.5.2 Purpose of Interviews

¹⁶ "New Regulations on Marriage Issued"(1994) 37*Beijing Review* 7-8.

¹⁷ Dobash, R.E. & Dobash, R.P. (ed.) (1998) *Rethinking Violence Against Women*, Thousands Oaks, Calif.; London: SAGE, pp. 143-144.

To understand and bring forward the position and experiences of women was one of the main purposes of my research. In order to present this aspect accurately, it is essential for the researcher to observe and listen to women's stories. Hilary Graham states that one of women's typical forms of communication is story-telling.¹⁸ It is the most natural way for women to express their experiences and feelings. It is also believed that interviewing can bring out people's ideas and memories in their own words rather than through the words of researchers, therefore enabling the researcher to understand the nuances of each story and its uniqueness. Interviewing women is a way of learning from women. It has special significance in the sense that it changes centuries of legal practice which ignored them or had men speaking for them.¹⁹

I chose semi-structured interviews as one of the major means to collect data, because I believed that this strategy would avoid several disadvantages in collecting data on sensitive issues such as domestic violence. Firstly, formal interview techniques that require interviewees to answer questions do not allow women to think and present themselves in their own way. The danger would be to deny them the space they need to relate their true feelings and their real needs. They have to answer questions that may not be relevant to their particular experience, which distracts from what they really want to

¹⁸ Graham, H. "Surveying Through Stories" in Bell, C. & H. Roberts (ed.) (1984) *Social Researching: Politics, Problems, Practice*, London: Routledge & Kegan Paul, pp. 104-124.

¹⁹ Bell, S.E. "Becoming a Political Woman: The Reconstruction and Interpretation of Experiences through Stories" in Todd & Fish (ed.) (1988) *Gender and Discourse: The Power of Talk*, Norwood, NJ: Ablex.

say. In addition, they are more likely to tailor their answers to meet researchers' needs rather than express themselves freely. Secondly, according to some feminist researchers, such as Finch, Graham, Oakley and Ramazanoglu, traditional ways of interviewing women have a tendency to re-create the power imbalance that exists between men and women in society. During interviews, women have traditionally been put in a passive position, and their activities controlled by interviewers. My research sought to avoid such a power imbalance.

The semi-structured interview technique I used consisted of asking questions within a rough framework with the main purpose of encouraging women to tell their stories. It did not take the form of questions and answers. Instead, it resembled an informal conversation. Questions were only used to encourage women to tell their stories. I tried to avoid asking abrupt questions so as not to interrupt their narrative. Instead, I raised questions to help them finish their stories. By doing so, I gained in-depth information about the complexity of and interaction between women's experiences, their coping skills, and the barriers they encountered during the whole process of seeking help from non-institutional and institutional organisations. I also gained many unexpected details of their experiences as abused women.

The major advantage of the in-depth interview, as Judith Bell has mentioned, is in "the way in which a response is made (the tone of voice, facial expression, hesitation, etc.) [which] can provide information that a

written response would conceal", so "the interview can yield rich material and can often put flesh on the bones of questionnaire responses."²⁰ In fact, Lofland has pointed out that interviews and participant observation go hand in hand, and much of the data gathered in participant observation comes from informal interviewing in the field.²¹ A good combination of the two research methods will enrich the research results.

5.5.3 Interviewing Abused Women

The subject of domestic violence is a very sensitive topic to Chinese women as it is commonly believed that "Domestic shame should not be made public".²² Every step of the interview needs careful preparation in order to get a sensible response. Considerations include: finding a suitable person to contact the abused women, explaining the purpose of the research, arranging a right place and right time to conduct the interview, preparing appropriate questions to ask, making sure to ask critical follow-up questions, establishing a relationship of trust with the interviewees, and making feedback telephone calls to them to complete the interview.

Finding the right person to contact the abused women is the first step to an interview. I tried to contact several abused women directly, but the majority of them turned me down. So I changed my strategy. I asked the

²⁰ Bell, J. (1993) *Doing Your Research Project*, Buckingham: Open University Press, p. 91.

²¹ Jayaratne, T.E. & Stewart, A.J. "Quantitative and Qualitative Methods in the Social Sciences" in Fonow, M.M. & Cook, J.A. (1991) *Beyond Methodology*, Indiana University Press, p. 56.

²² This is an old saying in China.

lawyers involved in their cases to contact them, so as to explain the purpose of my research, and tell them that I would like to contact them soon. Before I contacted an abused woman, I would first read her file, prepare myself as regards what I should talk to her about and work out how I was going to conduct the interview.

(a) Finding the Right Place

Carolyn Hoyle points out that "the nature of domestic violence means that any intervention from outside the family might be considered by the perpetrator to be provocative. Hence research on this issue — in particular interviews conducted within the victims' homes is likely to result in further harm to the participants than research in most other areas of social science... It does mean, though, that interviewers need to be sensitive to the dangers to which victims might be exposed as a direct result of the interviewer's presence."²³ The house of respondents is not a good choice of venue for interviews unless the respondent is very sure that the abuser will not turn up unexpectedly. To find a quiet and safe place to conduct the interview is an essential condition to gain a successful result.

I used three kinds of settings for my interviews: the WLSSC, a quiet public place like a park, and my house. I normally asked the participants to express their preference for an interview place, because a comfortable place for them would result in a good interview. By comparison, my house was the

²³ Hoyle, C. (1998) *Negotiating Domestic Violence*, Oxford: Oxford University Press, p. 41.

best place to conduct an interview. I prepared water and tissue for my interviewees. I normally greeted them at a bus station, chatted with them casually, and made them sit comfortably on my sofa. As there was no interruption during the interview, we could talk for hours before I wound up the dialogue. The centre was another good choice, because women felt safe there. But sometimes respondents would prefer a third place to discuss their experiences such as a quiet park.

My experience has shown that a public place is not suitable for conducting such an interview, because there are more distractions in these places. Women are not completely open in such settings, as they cannot express their feelings freely, e.g. crying or showing strong emotional feelings. In addition, they tended to lower their voice, which was a clear sign that they did not feel comfortable venting their family matters in a public place.

(b) Face to Face Interviews

Isobel Bowler points out that "interviews are particularly problematic where there is a difference in expectations and experiences between interviewee and interviewer. Unlike participant observation, the interview depends upon the active participation of the research subject, who needs to share the general objectives of the researcher and to provide information or articulate views and opinions."²⁴ The active participation of the research subject and their precise

²⁴ Bowler, I., "Problems with Interviewing: Experiences with Service Providers and Clients" in Miller, G. & Dingwall, R. (1997) *Context & Method in Qualitative Research*, London: SAGE publications, p. 70.

understanding of the research objectives are deciding elements leading to the success of the interviews.

Research may be carried out for many reasons. However, the most frequent underlying assumption is that the research may make things better, and perhaps this motivates people to participate. Respondents perceive that they have a stake in the outcome of the research, not necessarily for themselves but for others like them, or society as a whole.

Before I began an interview, I explained to my interviewee that the purpose of my research was to understand abused women better so as to provide better help for them. They were quite co-operative after I explained the purpose of my research. Many of them called on relevant organisations to be more involved in providing help to individuals in similar circumstances, because they had found it difficult to get sufficient help. Quite a number of them thought highly of the significance of the research and encouraged me to channel the research results to higher authorities.

I also explained to them that the research was anonymous. Their names would not be used anywhere so that they need not worry that people would recognise them. Ardener suggests "We may speak of 'muted groups' and 'articulate groups' as being along a dimension. There are many kinds of muted groups. We would then become aware that it is muted simply because it does not form part of the dominant communicative system of the society

expressed as it must be through the dominant ideology."²⁵ Abused women in China are a muted group, because domestic violence has been ignored for so long and the cultural tradition forbids women to speak out about their anger and shame. My mission was to stimulate them speak out about what was in their minds without reservation.

Once I had established a trust relationship with my interviewees, I realised the extent of their depression, and understood how desperately they wanted to find someone with whom to share their misery and how eager they were to get efficient institutional help. One woman told me that she had cried all her tears out during more than ten years of abuse. Another seriously burnt woman told me that she would have killed herself a long time ago if her child hadn't grown up and her former husband wasn't sentenced to death. She chose to stay alive because she wanted to see her perpetrator sentenced to death.

One important detail in conducting an interview is how to explain domestic violence, because the concept has not been widely accepted in China, although wife beating is a common phenomenon in cities as well as in the countryside. "The use of language and specific terms is very important for creating a "share of meanings" in which both interviewer and respondent understand the contextual nature of the interview."²⁶ Instead of asking whether they experienced domestic violence or not, I used a widely accepted term "wife beating" to convey the same meaning. This effectively avoided

²⁵ Fontana, A. & Frey, J.H. "Interviewing -The Art of Science" in Denzin, N.K. & Lincoln, Y.S. (1998) *Collecting and Interpreting Qualitative Materials*, London: Sage Publication, p. 76.

²⁶ *Ibid.*, p. 68.

confusion at the start of an interview. By the end of the interview, I asked for their definition of domestic violence. Many of them said they did not take fighting between couples or wife-beating, as a family problem called domestic violence. They either became aware of the concept only recently or had no idea at all about it.

I tape-recorded our conversations with the consent of participants, then transcribed them. Having had a face-to-face interview, I went back to write it down, then picked up missing points and conducted follow up face-to-face interviews or telephone interviews again. Some of the participants were interviewed more than five times. The duration of interviews varied from 4 hours to 10 hours.

(c) Relationship with the Participants.

The relationship between researchers and their participants is an important element in deciding whether researchers can get the information they require, particularly when this concerns a sensitive issue like domestic violence.

Abused women in China tend to keep quiet about their suffering due to traditional family values. They are particularly concerned about gossip among relatives, colleagues, and neighbours. In fact, they are eager to talk to people to release their depression and seek advice. A "knowledgeable stranger" is what they need. As a researcher, the fact that I was totally outside of the interviewee's community satisfied her need for confidentiality. As a knowledgeable professional, I provided her relevant expertise and support,

especially the legal advice that they needed. The satisfaction of getting support and expressing their long-constrained feelings stimulated them to communicate with me. A friendly relationship between the researcher and participants helped participants give detailed narratives about their abuse.

5.5.4 Interviews with People from Institutions

To present a multi-dimensional picture of the issue in China, I managed to conduct separate interviews with policemen, one women's federation, and one neighbourhood committee.

The interview with a staff member from a local women's federation was conducted by telephone. I introduced myself as a member of Domestic Violence in China: Research, Intervention and Prevention. My interviewee was quite happy to communicate with me because she was also a member of the network.

I chose the neighbourhood committee where I live for the reason of convenience and familiarity. I have known the staff of the neighbourhood committee for many years, therefore there were no barriers for me to get the information I needed.

I went to two police stations, one urban and one suburban. I obtained access to interview one policeman in an urban police station through a friend. With regard to the suburban police station, I went with lawyers in the WLSSC to investigate a case (a murder case caused by domestic violence). A third policeman was a former classmate of mine. As all of them were middle-level

cadres in local police stations, their views on domestic violence were quite representative.

5.6 Institutions Related to Women

For the purpose of this research, I shall confine myself to institutions related to abused women, namely Women's Federation, the Work Unit, Neighbourhood Committee, and the police. This will include an overview of legal duties and formal positions of these institutions to provide background information for analysing their effectiveness as promoters and protectors of women's rights in China in later chapters.

5.6.1 All China Women's Federation

With the founding of the People's Republic of China in 1949, A separate organisation for women was established to bring about fundamental changes to women's position in the society. It is a national organisation with its branches at village level. Its aim is to take up women's issues, negotiate their rights, and to implement the government's policy on women. It works to change the status and role of women in social, economic and political spheres of life, and to fight against any discrimination against women.

The All China Women's Federation is the only national women's organisation in China. It was founded in Beijing on April 3, 1949, six months before the People's Republic of China was proclaimed. The All China Women's Federation was called The All-China Democratic Women's

Federation (ACDWF) when it was founded. The main goal of the organisation is to:

"Unite Chinese women of all nationalities and democratic classes so that they can exert their united strength to work in various fields of national construction, to protect women's rights and interests and promote child welfare, to ensure equality of women, and raise the level of their political understanding and vocational ability. In general it strives to bring about the complete emancipation of women and to rally all peace-loving women the world over in defence of peace."²⁷

According to their manifesto, the structure of the organisation is

"based on affiliated groups, and various national organisations of women are affiliated to it. The democratic women's federations in every province, municipality and autonomous region are its member-organisations. Below them come the county and city women's federations, right down to the lowest units--- women's councils in the Hsiang (rural districts) and villages, and the women's councils in the cities. Members of the women's councils both in town and countryside are directly elected by the women in their own constituencies."²⁸

The work ethic of the organisation is predicated on the concept of the "mass line". This means that the views of participants are carefully investigated, discussed and communicated before they are put into practice. When new tasks have been set, the ACWF will ask women's federations at all levels to focus their efforts on them. Subsequently, public campaigns are launched to enhance women's understanding of the new task. Finally, open discussions about relevant issues are published in newspapers.

²⁷ "Introducing the All-China Democratic Women's Federation", *People's China*, March 1955 in Croll, E. (1974) *The Women's Movement in China*, Nottingham: the Russell Press Limited, p. 4.

²⁸ *Ibid.*

The present function of the ACWF "serves as a transmission belt between the party and society, relaying party policy downwards and reflecting grass-roots opinion upwards, in a democratic centralist fashion. The ACWF thus has the dual function of representing women's interests to the party and the party's interests to women." ²⁹

As we have seen, the economic reform policy has brought significant and contradictory changes in the economic opportunities for women and caused the repositioning of women both in the economy and at home. Therefore women's federations face new challenges. Some urban women benefit from the reform by becoming entrepreneurs, private traders, and other high-earning professionals. In 2000, among employed women in towns and cities, 6.1% held administrative positions, a 3.2% increase since 1990. Women professionals consisted of 22.8% in the work force, a 5.4% increase compared to 1990. The increase of women professionals was more substantial than for men. Investigations show that 95% of female entrepreneurs obtained their administrative positions in the late 1980s and early 1990s.³⁰ Meanwhile, large numbers of experienced women were being made 'redundant', or faced other similar professional uncertainties. "The commoditisation of the economy has begun to permeate the realm of sexuality and redefine the nature of female subordination."³¹ One significant feature of

²⁹ Howell, J. "Shifting Relationships and Competing Discourses in Post-Mao China: The All-China Women's Federation and the People's Republic" in Jacobson, R. (2000) *State of Conflict --- Gender, Violence and Resistance*, New York: Zed Books Ltd, p. 127.

³⁰ *Chinese Women*, September 5, 2001.

³¹ Howell, op. cit., n. 29, at p. 130.

female subordination is an increase in the number of reported family violence cases and the increasing seriousness of these cases.

The response of the women's federation to this issue has changed, from vigorously calling on women to be actively involved in the economic reforms and ignoring the abuse women experienced at home, to gradually realising that the issue should be addressed, then finally taking actions to stop such practice. The changing practice of the ACWF is due to the following elements. Firstly, increasing incidents of serious abuse cases alert the women's federation that domestic abuse is not merely a family matter that requires no public intervention. The issue needs to be addressed for the sake of family and social stability, as stability is the essential element to safeguard the smooth development of the economy. Secondly, The Fourth World Conference on Women (1995, Beijing) was an important stimulus to address the issue. One of the issues discussed during the conference was the elimination of discrimination against women in all aspects of their life, especially within families. The conference highlighted this problem which, up to then, had been ignored in China. As China has signed the Convention on the Elimination of All Forms of Discrimination against Women, actions have been taken. Institutions involved in providing services for abused women have been set up; Hotlines and women's refuges have been established. An anti-domestic violence working group has recently been formed by the Chinese Law Society. These steps mark the significant attempts made by the government to put the hitherto 'private' issue onto the public agenda.

Women's Federations at provincial levels play an active role in safeguarding women's rights at home. For example, the women's federation in Hunan province is actively involved in drafting the first anti-domestic violence law in China. Local governments are encouraged to draft local anti-domestic violence laws.

5.6.2 Neighbourhood Committee

Neighbourhood committees are organised according to the Constitution and Neighbourhood Committee Organisation Law. The neighbourhood committee is the basic level local organisation for urban citizens to self-organise, self-educate and self-service. People's governments and their branches are in charge of supervising, supporting and helping neighbourhood committee.³²

The institutional structure of the neighbourhood committee is as follows: according to Neighbourhood Committee Organisation Law, a neighbourhood committee is made up of one director, one deputy director and 5 to 9 members.³³ These are a security member, mediator, teenager education member, family planning member, women's work member, member for the aged people, social welfare member and sanitation member.³⁴ Members who are involved in family disputes are security members and people's mediators.

³² Article 1 and 2 of Organization Law of Urban Neighborhood Committee, passed on Dec. 26, 1989.

³³ Article 7 of Organization Law of Urban Neighborhood Committee.

³⁴ Beijing Civil Administration Bureau (ed.) (2000) *Working Handbook of Neighborhood Committee under Sub-district Construction*, Beijing, pp. 8-14.

The responsibilities of the security members which are related to family matters are:

- (a) to spread legal knowledge in order to enhance people's sense of law;
- (b) to be familiar with family backgrounds of citizens in the area;
- (c) to solve disputes among people;³⁵

The responsibilities of the people's mediator are:

- (a) to mediate disputes among people;
- (b) to investigate causes of disputes and solve disputes impartially;
- (c) to spread knowledge of law, regulations and policy of the government and educate citizens to abide by laws.³⁶

5.6.3 The Work Unit and Women

Since the founding of the People's Republic of China in 1949, the government practised its control over people through the work unit in which they were employed. Under the planned economy, the work unit system was a special system that affected every aspect of city dwellers' life. Everyone was affiliated with a unit. The main mechanism of the work unit system was to put every member into an administrative system, in which allocation of resources, political mobilisation, and ideology were merged into one organic whole. The purpose of the system was to control and administer every aspect of social life effectively so as to implement policies of the Communist Party and the

³⁵*Ibid.*, p. 9.

³⁶*Ibid.*, p. 10.

government sufficiently. With the help of the work unit system, the political, economic, and cultural intentions of the government were turned into policy or resolution, then spread to every member of the unit and implemented without delay.

Women benefited from this system in the following ways:³⁷

- a) The work unit system was an all member employment system. This guaranteed the majority of urban women permanent employment.
- b) As the work unit practised equality in salary payment, women got equal pay for equal jobs.
- c) The work unit provided not only fundamental welfare including housing, medical expenses, pension, and children's subsidies but also services to its employees, such as dining facilities, nursery, school and hospital. This released women from the heavy burden of housework and enabled them to develop themselves in a wider social context.
- d) The work unit played the role of an administrator. It monitored every aspect of its members, including family life. Employees needed to get approval from their work unit in matters such as marriage, divorce, giving birth to children, and so on. When a man's behaviour in his family was against the ideology of the Communist Party, for example, he abused his wife, or abandoned his wife or had extra-marital affairs, he would have less opportunities of promotion.³⁸

³⁷ Jie, A. H. "Work Unit and the Development of Urban Women"(2001) 2 *Women Research* 14.

³⁸ *Ibid.*

Under the planned economy, the work unit carried out the state policy of equality between men and women conscientiously. In order to realise the equality between men and women, the work unit normally had a member for women's work.³⁹ She was in charge of implementing family planning policy, spreading the government's policy on women, and protecting women's rights. Mediating family disputes was one of their jobs.

Employees belonged to, relied on, and were monitored by their work units.⁴⁰ When one is involved in extra-marital affairs, both work units have the responsibility to educate the wrong doer so as to help the spouse reconstruct their relationship. The work unit of the wrong doer has the authority to apply administrative sanctions against him.⁴¹ Although the work unit system has been criticised for interfering too much in family life, it protected the interests of women effectively.

The market economy stimulated the emergence of a labour market. About 100 million people are not affiliated with units and nearly 25 million people work for the private sector.⁴² Even for those who are working within a unit find themselves losing the benefit as well as the control of their units gradually. More and more people feel that their units have less and less power to intrude in their daily lives.

³⁹ This is the mechanism in China. Every work unit has a member of women's work.

⁴⁰ Yu, X.Y. "Sociological Analysis of DanWei Identity" (1991) 5 *Sociological Research* 47-53. Chan, C. L. W. "Gender Issues in Market Socialism" in Wong, L. & MacPherson, S. (1995) *Social Changes and Social Policy in Contemporary China*, Aldershot: Avebury Ashgate Publishing Limited, pp. 118-215.

⁴¹ Jie, op. cit., n.37, at p. 14.

⁴² Starr, J.B. (1997) *Understanding China*, London: Profile Books Ltd, p. 71.

With the aim of seeking greater profits and raising working efficiency, the work unit is less and less likely to interfere in family disputes, because mediating family disputes is considered as a waste of time. Abused women cannot get consistent help as they used to in the past.

5.6.4 The Police

On November 1, 1949, the Ministry of Public Security was established with its branches all over the country. Ministries of public security operate on the central government level and within large administrative districts; public security departments at provincial level, autonomous regions and municipalities directly under the central government; public security bureau in cities directly under the provincial government; public security bureaux on county and city levels. Public security bureaux at provincial level and autonomous regions set up their branches in administrative government offices. Cities directly under the provincial government set up public security sub-branches at districts level. Public security bureaux at county and city levels set up public security offices at street and town levels.⁴³

1. Duties of the Public Security Organs

The duties of the public security organs can be listed as the following:

- a. to safeguard the security of the country;
- b. to safeguard public order of the society;
- c. to safeguard the security and freedom of citizens;

⁴³ The Ministry of Public Security (ed.,) (2001) *Basic Knowledge of Public Security*, Beijing: China People's Public Security University Publishing House, p. 9.

d. to protect public property and legal property of individuals;

e. to prevent, curb and punish criminal activities.⁴⁴ To protect personal security of citizens is to protect the rights of life and health of citizens and to curb activities such as murder, bodily harm, robbery, kidnapping, rape, forcing women to become prostitutes, selling people etc. To protect the freedom of citizens is to protect the dignity of the human personality, the freedom of communication, and the freedom of secure letter communication.⁴⁵

2. Categories of Police Forces

Divided by their responsibilities, the police force can be categorised into nine types, among which public security police and patrol police are the two types of police that are involved in dealing with domestic violence cases.

The duties of public security police are as the follows:

- a. to safeguard social public security order in accordance with laws and regulations;
- b. to deal with public security order cases;
- c. to ban contraband goods;
- d. to prevent criminal cases;
- e. to prevent and deal with disasters and accidents;
- f. to patrol in duty areas;

⁴⁴ *Ibid.*, pp. 18-20.

⁴⁵ *Ibid.*, p. 19.

g. to promote the mass to participate in activities of safeguarding social order.⁴⁶

The duties of patrol police are to defend the public security order in the area under its jurisdiction; to prevent and curb public security order cases and accidents; to participate in dealing with disasters; to receive reports from citizens; to stop civil disputes happening in the public; and to provide aid and service to citizens.⁴⁷

3. Obligations of the police

Article 20 of the Police Law of the PRC states, "People's police must decide cases according to law and handle a matter impartially; set good examples and abide by social public morality; treat people politely and work with civic virtues; respect habits and customs of the mass."

4. Encouragement Mechanism

Encouragement mechanism for individuals includes honorary title, merit citation (first class), second class, third class and merit. According to encouragement and punishment rules of people's police, individuals win certificates, medals and bonus. For those who win first class and above first class awards, they are promoted to a higher police rank in advance.⁴⁸

⁴⁶ *Ibid.*, p. 22.

⁴⁷ *Ibid.*, p. 23.

⁴⁸ *Ibid.*, p. 145.

5. Requirements for Rewards

There are 9 strict criteria to meet in order to get rewards.⁴⁹ They are mainly about gaining remarkable achievements in fighting against criminals, dealing with emergency, fulfilling difficult duties, and implementing state laws. Among the nine items that lead to merit earning for the police, only one item (item 5) is related to mediating disputes for the general public. Item 5 states "Having outstanding merits in serving people, dealing with cases and patrolling in areas within his jurisdiction"⁵⁰ This partially explains why police consider mediating family disputes as a minor job, because it is very hard to earn credits.

In summary, the above mentioned four institutions are the most frequently contacted units abused women approach. These units have the responsibility of intervening in domestic violence cases, however interviews I conducted to abused women show that the intervention varies a great deal both in terms of degree and frequency. This will be discussed in later chapters.

Conclusion

In this chapter, I have detailed the site of my fieldwork so as to depict a comprehensive picture of the place from where the samples of this research were drawn. I have also provided information about the process of data collection and institutions related to abused women. The choice of qualitative

⁴⁹ *Ibid.*, p. 146.

⁵⁰ *Ibid.*

research methods, more specifically in-depth interviews, better serve the purposes of the study, because research on domestic violence in the Chinese context remains an unploughed field, where neither a theoretical framework nor thorough understanding of the issue is available. Qualitative research methods help to present a true picture of this problem.

Chapter 6

Women's Experience of Violence

In the previous chapter, I have detailed the methodology for this research. This chapter is devoted to presenting the experience of violence which women in the sample have suffered and to highlighting the features of this violence. My methodology will include providing profiles of the thirty women surveyed, including their family background, education, socio-economic situation, and basic information about their husbands. This chapter endeavours to correlate economic development in China with the increase of domestic violence women experience by analysing first-hand fieldwork data. It is essentially an attempt to critically review the inherent relationship between women's deteriorating economic situation in comparison with their husbands and the occurrence and escalation of violence within the family.

Thirty women participated in this research. They all experienced being beaten by their husbands for various reasons. Although they do not represent the totality of abused women in China, as this is a qualitative study, their experiences provide an illustration of the kind of violence, which prevails in marriages in China. Due to the fact that the marriages were established during the country's economic reform era, these women's experiences of violence also provide insights into infringements of human rights within marriages against the background of a rapid economic development.

6.1 Basic Information Concerning Abused Women

Thirty Women were interviewed in the study. For reasons of confidentiality, their names were changed to case numbers. Basic data on these women is listed in Table 6.1.

The age of the women ranges from 27 to 59 years; the average being 38.6 years old. Four are below the age of 30; eight between 30 and 35; seven between 36 and 40; eight between 41 and 45; and three above 45. Twenty-three among the thirty (76%) are between the age of 30 and 45. This may indicate that women in this age group are at a relatively high risk of domestic violence.

Generally speaking, the educational level of the women interviewed is higher than the national average of 6.1 years in 2000.¹ Four were university graduates; eight were college graduates; nine were high school graduates; four were junior middle school graduates. Three were primary school graduates, which fell below the national educational level. Ninety percent of women coming to the WLSSC for help are educated women, which may indicate that the higher education a woman receives, the more likely she is to be aware of her rights and to seek out help. This shows that education in general and education in domestic violence issues in particular can help women face the problem more positively.

The average length of marriage was 11.9 years, with the longest having lasted 38 years and the shortest 3 years. The average years of experiencing domestic violence were 8.95 years; the longest 36 years, and the shortest a year.

¹ "Statistical Report on the Second Round of Poll on the Social Status of Chinese Woman", *Chinese Women*, Sept. 11, 2001.

6.2 Family Background

The family background of the interviewees can be roughly put into four categories: worker's family (total 8), peasant's family (total 7), intellectuals (total 7) and cadres/government employees (total 8). The family background of the abused women was evenly spread across these different categories.

One factor explored in the interviews was the extent to which the women had experienced incidents of domestic violence in their natal family backgrounds. This was the case for six of the women interviewed, including four of the eight from workers' families, one of seven from intellectual families, and one of the eight from cadres' families. Interestingly, none of the seven women from peasant family background reported such experience of domestic violence in their natal families.

Table 6.1 Basic Information About Abused Women

Name	Age	Education	Number /gender children of	Occupation	Family backgr ound	Duration of marriage	Years of Abuse
Case 1	45	Junior high school	1, male	Lift operator	Worker	15 years	14.5
Case 2	31	College	1, female	Clerk in a factory	Cadre	6	2
Case 3	42	High school	1, female	Worker	Worker	16	15.5
Case 4	37	High school	1, male	Housewife	Worker	10	2
Case 5	29	Junior High school	1, female	Temporary Clean lady	Peasant	3	3
Case 6	37	University	1, female	Researcher	Cadre	10	10
Case 7	27	Junior high school	1, female	Self-employed	Worker	3	1
Case 8	59	Primary school	3, males	Retired worker	Peasant	38	36
Case 9	43	High school	1, male	Shop assistant	Worker	18	18
Case 10	35	University	1, male	Government clerk	Cadre	8	7
Case 11	35	Technical	1, male	House	Peasant	12	12

		school		wife			
Case 12	35	High school	1, female	Taxi driver	Teacher	7	5
Case 13	32	University	none	Company employee	Intellec-tual	6	1
Case 14	49	University	1, male	Teacher	Intellec-tual	14	12
Case 15	40	College	1, male	Researcher	Intellec-tual	7	6
Case 16	45	College	1, female	Government employee	Cadre	21	4
Case 17	44	College	1, female	Doctor	Cadre	18	10
Case 18	53	Junior high school	1, female	Teacher	Intellec-tual	20	11
Case 19	35	High school	1, female	Peasant	Peasant	10	9.5
Case 20	45	Junior High school	1, female	Worker	Worker	13	11
Case 21	34	High school	1, female	House-wife	Intellec-tual	6	1
Case 22	43	High school	1, male	Hairdresser	Cadre	15	3
Case 23	38	Primary school	3, one male two females	Peasant	Peasant	17	17
Case 24	29	College	1, female	Company employee	Intellec-tual	5	1
Case 25	38	College	1, male	Company employee	Intellec-tual	13	13
Case 26	27	High school	1, male	House-wife	Worker	8	11
Case 27	38	College	1, female	Accountant	Cadre	10	3
Case 28	35	College	none	House-wife	Cadre	4	4
Case 29	37	High school	1, male	Hotel waitress	Worker	14	14
Case 30	43	Primary school	2, one male one female	House-wife	Peasant	11	11

Note: The calculation of age and duration of marriage is based on the year 2001.

The occupations of the 30 respondents were as follows: one was self-employed, 3 were company employees, 7 were government employees (2 researchers, 2 worked for the government, 2 teachers and 1 doctor. I put this category into government employee because they get salary from the state), 6 were workers, 6 were employed in service trades, 5 were housewives, and 2 were peasants. The former three categories belong to high and medium income groups, while the latter four falls into the low-income category. Nineteen of the 30 abused women (nearly two thirds) are from lower income groups.

Table 6.2 A Comparison of Occupation and Income Between Husband and Wife

The Couple	Education	Occupation	Monthly Income in Yuan	Family Background
Wife 1	Junior school	Lift operator	400	Worker
Husband 1	Not known	Company worker	900	Peasant
Wife 2	College	Factory clerk	500 *	Cadre
Husband 2	Technical school	Taxi driver	3500	Worker
Wife 3	High school	Company employee	1500	Worker
Husband 3	Not known	Company manager	3600	Peasant
Wife 4	High school	Housewife	None	Worker
Husband 4	Not known	Manager	3000	Intellectual
Wife 5	Junior school	Cleaning lady	600*	Peasant
Husband 5	College	Technical worker	1500	Peasant
Wife 6	University	Researcher	2000	Cadre
Husband 6	Postgraduate	Researcher	3000	Intellectual
Wife 7	Junior school	House-wife	none	Worker
Husband 7	Not known	Self-employed	unknown	Peasant
Wife 8	Primary school	Retired worker	500*	Peasant
Husband 8	Primary school	Worker	Unknown	Peasant
Wife 9	High school	Shop assistant	Unknown*	Worker
Husband 9	Primary school	Shop assistant	Unknown	Peasant
Wife 10	University	Government clerk	1500	Cadre
Husband 10	University	Manager	Unknown	Unknown
Wife 11	Technical school	Housewife	None*	Peasant
Husband 11	Unknown	Boss	Unknown	Peasant
Wife 12	High school	Taxi driver	3000	Intellectual
Husband 12	Unknown	Factory worker	1000	Worker
Wife 13	University	Company employee	8000	Intellectual
Husband 13	High school	Unemployed	Unknown	Worker
Wife 14	University	Teacher	2000	Intellectual
Husband 14	University	Doctor	3000	Worker
Wife 15	College	Researcher	1500	Intellectual
Husband 15	University	Doctor	2000	Peasant
Wife 16	College	Airline employee	2500	Cadre
Husband 16	University	Manager	4000	Worker
Wife 17	College	Doctor	2500	Cadre
Husband 17	College	Clinic manager	4000	Unknown
Wife 18	Junior school	Teacher	1500	Intellectual
Husband 18	Unknown	Researcher	Unknown	Unknown
Wife 19	High school	Worker	Pension*	Peasant
Husband 19	Junior school	Peasant	Unknown	Peasant
Wife 20	Junior school	Unemployed	Pension*	Worker
Husband 20	Junior school	Restaurant boss	Unknown	Worker
Wife 21	High school	Self-employed	Unknown	Intellectual

Husband 21	High school	Self-employed	Unknown	Cadre
Wife 22	High school	Hair dresser	700	Cadre
Husband 22	unknown	Self-employed	unknown	Worker
Wife 23	Primary school	peasant	None*	Peasant
Husband 23	Unknown	Warehouse man	1500	Peasant
Wife 24	College	Company employee	2000	Intellectual
Husband 24	PhD	Researcher	Unknown	Cadre
Wife 25	College	Company employee	Unknown	Intellectual
Husband 25	College	Company boss	Unknown	Unknown
Wife 26	High school	Unemployed	None*	Worker
Husband 26	High school	Police	About 1500	Unknown
Wife 27	College	Accountant	1000	Cadre
Husband 27	Unknown	Warehouse men	Unknown	Unknown
Wife 28	College	Housewife	None*	Cadre
Husband 28	Unknown	Boss	Unknown	Peasant
Wife 29	High school	Hotel waitress	700	Worker
Husband 29	Unknown	Unemployed worker	Unknown	Worker
Wife 30	Primary school	Peasant	None*	Peasant
Husband 30	Unknown	Boss	Unknown	Peasant

The mark * in table 6.2 indicates that the income is below the average income in 1999, which was 617 Yuan per month.² The monthly income of thirteen women among the thirty (six of men at most) was below the average level.

Table 6.2 compares the education, occupation, monthly income and family background of the thirty couples. The data in the above table show that 13 men were bosses who were economically better off than their wives. These men are part of the new social elite, a class that emerged during the economic reform era. There are 6 government employees (2 doctors, 3 researchers, 1 policeman), 6 workers (2 of whom work in the service industry), 1 peasant, and

² *Ibid.*

2 were unemployed. Except 3 people whose income remains unknown, 2 unemployed, and 1 peasant, all the other men earned more than the national average income in 1999 which was 617 Yuan per month.³ There were 6 men with relatively low income.

In Chapter 2, I analysed the negative impact of the economic reform policy on Chinese women in general. My fieldwork data illustrates this impact. Women are excluded from the mainstream development process and are being forced to take up low-paid and low-status work; or else they are being forced out of paid jobs to become housewives. The economic situation of twenty women had been heavily affected by the economic reform policy due to changes of employment, while 10 women remained in their original jobs. Among the 20 women adversely affected, 6 experienced unemployment during the reform of state-owned enterprises and lost all benefits associated with the old work unit system, such as free medical care, pension and the back up of work units. One woman became redundant during the reform of the administrative structure of the government. Five gave up their jobs during the reform years and became housewives. Two peasant women and one urban woman followed their husbands to cities. One woman started her own business. One woman became a taxi driver. Two women quit their original jobs so as to help the husbands in their business. One woman felt economic pressure and started to earn cash periodically in sideline activities.

³ The figure comes from "Statistical Report on the Second Round of Poll on the Social Status of Chinese Women", *Chinese Women*, Sept. 11, 2001.

In contrast, among the husbands of the 5 housewives, 4 took full advantage of the new economic policy and established their own businesses, while another was promoted to become the manager of a department. Among the 7 'redundant women', 4 of their husbands set up their own companies. The husbands of the 2 peasant women earned cash while their wives gave up agricultural labour in fields which had gained them equal status at home in the past. Hence, while these women lost their economic independence, the economic situation as well as social status of their husbands improved dramatically.

My fieldwork data supports Ester Boserup's findings. Her research showed that when home industries and market trade are replaced by modern forms of industry and trade, it was usually the men who were recruited for these modern activities, while women tended to be left behind in the traditional activities. The modern establishments overwhelmingly favour the employment of men, while women are mostly found in home industries. The inferior position of women in urban development is exacerbated by the strong preference for recruiting men to clerical and administrative jobs. Economic progress benefits men as wage earners in the modern sector, while the position of women is left unchanged, and even deteriorates when competition from the growing modern sectors eliminates the traditional enterprises carried on by women.⁴

Her findings reveal that mainstream development policies, such as those

⁴ Boserup, E. (1970) *Women's Role in Economic Development*, George Allen & Unwin, p. 139.

favoured by companies setting up shops in the developing world, and promoted by governments and multinational corporations in the developed world, privilege men in the areas that matter under capitalism—jobs and money—while they force women into the non-cash or low-cash activities such as agriculture, animal husbandry, and home industries.⁵

Only 3 women in my sample benefited directly from the economic reform policy. One became self-employed while another earned a good salary working at a computer company. The third woman became a taxi-driver, and earned an income higher than the national average. This corresponds with Boserup's findings, which show that women attain low levels of participation in the early days of economic development and are only able to improve their situation at later stages.⁶

Economic development involves industrialization and urbanization, which force rural populations to move to cities in search for jobs. The husbands of the 2 peasant women moved to cities to earn cash, a displacement that dramatically improved their economic situation as well as their status. The 2 peasant women followed their husbands at the price of giving up their agricultural labour in fields, which had won them equal status at home in the past.

My data also indicates a strong link between the increase of violence and the deteriorating economic situation of women. The woman in Case 4 used to work in the same hotel as her husband. When she gave birth to a child, she

⁵ *Ibid.*

⁶ *Ibid.*

quit her job. She said, "We used to be a good couple. Now no matter how much housework I do, he is not satisfied. I have become a burden in his eyes." The woman in Case 10 who was made redundant during the administrative reform of the government said, "He thinks he earns many times more than I do, so I should listen to him all the time. He takes me as his servant and baby sitter."

Such statements elucidate the fact that women, when faced with a deteriorating social status and increased economic dependence, encounter more family problems, such as domestic violence that was cited as a common source of suffering. These women have become more vulnerable to violence from their breadwinner husbands.

Conversely, when women's economic situation improves, violence decreases. The woman in Case 19 said, "from 1988 to 1991, he beat me numerous times. Since 1991, I earned one hundred Yuan each day from my second job. He stopped beating me." This is supported by the research results of Richters in Taiwan. She discovered that "where wife-beating used to be frequent and severe, as women increase their economic resources, redefine their gender roles, and no longer passively accept abuse, the level of gender violence in the family seems to be remaining constant or perhaps even to be dropping"⁷

My sample shows that when women's economic situation improves, they are more likely to leave the abusive relationship. In fact, 50% of women in the sample divorced their abusive husbands after their economic situation

⁷ Richters, J. M. (1994) 150 *Women, Culture and Violence: A Development, Health and Human Rights Issue* 102.

improved. The present study also shows that when women's economic situation worsens, men are more likely to file for divorce.

Furthermore, 5 women in my sample declared that they gave up their jobs to become housewives. By the end of my fieldwork, another woman who helped her husband set up a company became a housewife too. Housewifisation of women is a further component of the "femininity in the development process. Women are encouraged, or forced by lack of work, to consider themselves housewives first, workers second."⁸

The process of domesticating women, after they have been in formal employment, is closely related to the government's development policy and prioritising of economic goals. The former equality approach has been replaced by a gender-specific approach to economic development. The submission of gender policy to the economic objectives has led to a change of the rhetoric on women, and an active promoting of women's domestic role. One famous feminist in China, Li Xiaojiang, has the following comments on this. "The phenomenon of women returning to the home emerged in apparent conformity with economic reform: it caters to a male need to participate in a high level of competition. To put the matter even more bluntly, the suffocation of women's individual self-worth is the price paid for men's realization of their greatest social value."⁹

⁸ Jordan, A.D. "Human Rights: Violence Against Women, and Economic Development"(1996), 5 *Columbia Journal of Gender and Law* 216.

⁹ Li, X. J. "Economic Reform and the Awakening of Chinese Women's Collective Consciousness" in Gilmartin, C. K. (ed.,) (1994) *Engendering China: women, culture, and the state*, Cambridge: Harvard University Press, p. 364.

In addition, table 6.2 clearly displays the income gap between husbands and wives, and attests to the fact that the husband is still the main breadwinner of the family. According to the national statistics in 1999, although the income of women had seen a dramatic increase in the reform years, the income gap between men and women also increased by 7.4% since 1990, with the women's average income being 70.1% of that of a man's.¹⁰

This further illustrates the national research result, which states that the income gap between men and women had widened in the past ten years.¹¹ One striking phenomenon in my sample is that 43.3% of the perpetrators are bosses, which also illustrates the link between economic reform and the increase of domestic violence. It may also demonstrate the link between violence and the enlarged economic gap between the two parties. By comparing the occupations of husbands and wives, we can see that husbands enjoy better social status than their wives except in the case of the 2 unemployed husbands.

Strikingly however, 18 women mentioned the poor economic condition in which their husbands' family had been even before they got married. During the economic reform period, most of the husbands (except 2) improved their economic situations (of the 2 exceptions, 1 is a laid off worker while the other cannot find a stable job). This group of women benefited less from economic reform, compared with their husbands. From the perspective of economic conditions, 18 women come from a better family background than their

¹⁰ "Statistical Report on the Second Round of Poll on the Social Status of Chinese Women", *Chinese Women*, Sept. 11, 2001.

¹¹ *Ibid.*

husbands, which means that 60% of women I interviewed used to be better off than their husbands; however they lagged far behind in the reform years.

It is very significant to notice that 29 of the marriages were established during the economic reform years, some at the initial years of the economic reform. This suggests not only a link between economic development and the increase of violence, but also the link between enlarged income difference and the increase of violence.

The economic reform has caused the redistribution of wealth and power in society as well as in the family. The enlarged income gap between the husband and wife has intensified conflicts between the spouses. The husband who has gained more economic power may not only treat his wife unequally but also inflict violence on her. Some men have mistresses to satisfy their personal needs. 20 of the women I interviewed (66.7%) found their husbands living with mistresses while the abuse intensified.

6.3 Women's Experiences of Violence

This brings us to examine in more detail how violence against women began among those in my interview sample. Table 6.3 illustrates the relationship between the first incident of violence and years of marriage. In two-thirds of the cases violence occurs in the first three years of a marriage while in 10% it occurred within five years of the marriage, hence the great majority of violence in my sample happened in the early stage of the marriage.

Table 6.3 Records of the First Incidences of Violence

First instance of violence	Number of people	Percentage
Before marriage	1	3%
0 - 3 years of marriage	20	67%
4 - 5 years of marriage	3	10%
6 - 10 years of marriage	4	13%
11 years and over	2	7%

6.3.1 Causes of the First Beating

Judging from the accounts provided by the thirty women interviewed, the reasons for violence can be summarised as the consequences of disobedience to husbands, husbands having mistresses, husbands suspecting their wife of being unfaithful, the wife giving birth to a girl, conflicts with the in-laws, parenting issues, women wanting a divorce, or the wife attempting to correct the husband's misbehaviour.

Table 6.4 Causes of the First Beating

Causes of the first beating	Number of cases
Disobeying the husband	16 (case 2,3,6,7,8,9,10,11,12,15,20,22,23,24,26,30)
Husbands having mistresses	5 (case 4,7,16,21,27)
Suspicion of wife being unfaithful	3 (case 17, 25,29)
Conflicts with in-laws	2 (case 12,19)
Giving birth to a girl	2 (case 5,12)
Parenting issues	2 (case 1, 18)
Wanting money from the woman's family	2 (case 20, 28)
Women wanting a divorce	1 (case 13)
Correcting husband's misbehaviour	1 (case 14)

Note: some of the reasons for beating overlap, therefore the total number is over 30.

Table 6.4 sets out the reasons cited by these women as to why their husbands first began beating them. Some women gave more than one reason, so the total added to more than 30.

(a) Some Acts of Perceived Disobedience

From Table 6.4, we can see that the most common cause for initiating the first instance of beating is the wife's disobedience of the husband. This shows that beating is still a common practice for a certain number of men to exercise their power as head of the family. The deep-rooted patriarchal culture still plays an important role in China as some men take the view that they have the power to discipline "their" women and make them obey their orders. The following are examples of the circumstances in which 'disobedience' causes violence:

The woman's failure to fulfil her household chores (Cases 8, 20)

"He came back home from work. I had not got the meal ready. He was very angry. He beat me with a wide leather belt. I was black and blue." (Case 8)

Use the wife as an outlet for external pressure (Case 10, 24)

Two perpetrators in the sample beat their wives whenever they were in a bad mood. The husband in Case 10 was the manager of a computer company, whose daily job was to sell computers.

"He has to 'see the buyers' face at work, and I have to see his face at home." (Case 10)

The man in Case 24 longed for being an administrator so as to change the living condition of his family. He failed.

"He brings his bad mood back home. Whenever he is not happy, I am in trouble." (Case 24)

Both men felt equally frustrated no matter whether they were losers or winners in the fierce competitive environment of this fast growing economy.

Making him lose face (Cases 3,6,7,9,12,22,30)

"On the third day (after) we got married, he pulled my hair and smashed me on my face in his parents' house. He promised me a very good wedding ceremony in his hometown, however it turned out to be very simple. I said to him, "If my parents knew this, they would get angry." We quarrelled in front of his parents. My words annoyed him." (Case 6)

Making a man lose face is considered a challenge to his authority. It is more likely to cause violence if it happens in front of people. Making a man lose face caused nearly half of the first beatings in my sample. This further illustrates the point that beating is a form of enforcing men's authority over women.

Minor daily conflict. (Cases 2, 15, 26, 30)

"The first time he beat me was in a park. I cannot remember why. I remember he pushed me into a corner and hit my face. It caused a nosebleed." (Case 26)

Wanting money from women's natal family (Cases 20, 28)

"He wanted to establish a small business and forced me to get some money from my parents. I refused to do so. He kicked me and cursed me." (Case 20)

(b) Husbands having mistresses (Cases 4,7,16,21,27)

Another major cause of first beatings is that husbands take on mistresses. They beat their wives for two purposes, either to get a divorce or in order to force their wives to tolerate their extra-marital affairs.

"He had an affair with another woman in 1999. He filed for divorce in the local court in October 2000. I did not want a divorce, so the court rejected the case. Quite often he stayed out overnight. When he came back, he found fault to quarrel with me. That day I used his mobile to make an urgent phone call. He was very cross about it. He got hold of a piece of wood with sharp nails on it and beat my head. My head was broken with blood dripping down immediately." (Case 4)

For Case 4 (and Case 16), the husband exercised power, because he wanted to force the wife to agree to a divorce settlement. These men believed that when their wives could no longer stand the beating, the marriage would come to an end. There is also a belief in China that if the wife files for divorce, the court will not judge the case in her favour. As the Chinese marriage law has articles to protect the interests of women and children, men force women to file for a divorce so women lose their priority in property division and the fostering of children.

In Cases 7, 21, 27, although the husbands had mistresses, they did not desire a divorce. They wanted to maintain the one-wife and one-mistress relationship as it was.

"On the day my daughter had her birthday, my husband took her out. He took her to his mistress's house. My daughter saw them sleeping together. I shouted at him, "you dirty swine, even animals mind about their behaviour." He hit my head with a cup. I fought back." (Case 21).

The behaviour of the men in Cases 7, 21, and 27 can be seen to reflect elements of both the feudal and capitalist life style. When their wives forbid them to have mistresses, men beat the former to force them into accept their fate. This can be described as a relic of the feudal system, because in the long Chinese feudal history, it was common for rich people to keep one wife and several concubines. This sort of behaviour was considered a symbol of dignity and status. Although the practice has been abolished since the founding of the PRC, the thought of consuming women has seen a revival in the economic reform years. The new rich elite who have benefited from the economic reform policy have picked up the old practice in a new form, by either keeping a mistress or else a pretty female personal secretary. However, this practice also has capitalistic features, because it has been disguised as a form of sexual emancipation. This strange mixture of feudalism and capitalism put quite a number of women in my sample at risk of violence.

(c) Suspecting the wife of being unfaithful (Cases 17, 25, 29)

Having an unfaithful wife brings shame to the husband and his entire family. As was discussed earlier, adultery could be punished severely by the clan. Although such a practice has long been abandoned, men are still very concerned about their wives' faithfulness.

"The first time he beat me was because one of my male colleagues came to my house during noontime. I was working closely with my colleague on a project at that time. My husband got suspicious about our relationship. He beat me with a leather belt. He also went to my colleagues' house with a knife, threatening to hurt him if he dared to have an affair with me." (Case 17)

(d) Giving birth to a girl (Cases 5, 12)

As was argued in Chapter 2, China's one-child policy has had a great impact on women. Due to the cultural legacy of son preference¹² and the state family planning policy¹³, women who give birth to girls are caught between the pressure from their husbands, in-laws and other family members to bear sons and the pressure from the state to limit their fertility. Women who have girls lose status in the husbands' families and even become targets of family violence. This phenomenon is more common in single-son families and in rural areas.

Both the husband and the wife in Case 3 come from a rural area. The husband was the only son in his family. The whole family put pressure on the woman to have a son. When their daughter was born, the mother-in-law found her son a new girlfriend. She encouraged her son to divorce his wife so as to marry the girlfriend who had a chance of bearing a son. The violence intensified constantly.

"When I heard my baby crying, I was so tired that I wanted to go to sleep immediately; Outside of the delivery room, my husband fainted and fell to the ground when he heard the nurse declaring that it was "a baby girl". That was the day our miserable life started. He cursed me while he beat me, saying "You miserable wretch. You are not capable of bearing a son. You make my family no progeny. You make me faceless (in the eyes of) my parents."
(Case 5)

(e) In-laws conflicts (Cases 12, 19)

¹² This has been discussed in detail in chapter 2.

¹³ This has been discussed in chapter 3.

The first beating of two women in the sample was caused by conflicts between the wife and her in-laws. In-laws conflict becomes particularly obvious when a young couple lives with parents. The mother-in-law is normally in charge of daily arrangement in the house, including food, family affairs, and financial expenses of the family, while the daughter-in-law is involved in a paid employment outside the home. Conflicts emerge because the mother-in-law has the power over financial arrangements in the family while the daughter-in-law contributes to the family income. The daughter-in-law, when dissatisfied with the arrangements of the mother-in-law, will challenge her domestic authority, or alternatively, the mother-in-law will not be satisfied with the daughter-in-law. The husband enforces his authority by disciplining his wife through beating so as to force her to obey the family rule, meanwhile showing his filial piety to his mother. As we have already discussed in Chapter 2, filial piety is a cardinal principal to guide family relationships in China.

"We got married on 1st January 1988 and we started to fight on 1st May, the same year. His mother wanted us to hand in every penny we earned. That is not enough. She wanted us to buy gifts on the occasion of festivals. She went on about it because we did not buy any gifts for her on May Day. (May Day is a public holiday in China) I said, "It is rare to find such kind of person. We have already handed in our salaries." My husband was angry at what I said. We quarrelled. He kicked my waist. I fell down and could not stand up. Since then, I have become slightly crippled." (Case 19)

(f) Conflicts over Parenting (Cases 1, 18)

Parenting was the cause of the first beating for the two re-married women in the sample. Due to different attitudes towards children from the first marriage, the two couples quarrelled and fought with each other.

"He started to beat me half a year after we got married. I went back to my mother's house to take care of my sick son from my former marriage. When I came back, he complained about me neglecting him and leaving the family unattended. He slapped my face."
(Case 1)

(g) The woman wanting a divorce (Case 13)

Although there is only one woman in my study who experienced violence after she decided to end the marriage, this case represents a type of violence that only starts when one party raises the issue of divorce.

(h) Women criticising the husband's misbehaviour (Case 14)

The husband in Case 14 flirted with other women, including their housemaid. He also gambled and watched pornography. Whenever the wife wanted to correct him, a beating would occur.

"My husband flirted with our housemaid. The housemaid told me about it and wanted to quit the job. I was angry with my husband. He wanted to beat the housemaid. I tried to stop him. He beat me instead." (Case 14)

6.3.2 Administration of the First Beating

Table 6.5 Administration of the First Beating

Administration of the first beating	Number of cases
Slap on the face	6 (cases 1,9,13,15,23,26)
Punch	Table 6. (cases 2,5,7,10,12,13,18,24,25,26,27, 28,29,30)
Kick	4 (case 16,19, 20,25)
Hit by objects	6 (case 4,7,8,17,21,22)
Pull the hair and hit	4 (case 6,11,14,18)
Burn with lighting cigarette	1 (case 7)
Bite	1 (case 4)
Push	1 (case 3)

Punching is the most commonly used method of violence for the first beating. Hitting with objects and slapping on the face is also commonly used. Using fists and feet are the most common ways for men to beat their wives.

6.3.3 Severity of the First Beating

In this study I have grouped the severity of domestic violence into three categories: light injury, moderate injury and severe injury. 'Light injury' is defined as minor incidents of an infrequent nature with little or no obvious harm left on the body, such as a punch, a light scratch mark, or a bruise. 'Moderate injury' involves more frequent incidents of a more serious nature, with obvious harm left on the body after the incident, such as long term swelling, broken bones, or scarring. 'Severe injury' denotes long-term or serious injuries that are life threatening and have long-term effects, such as injuries to the head, eyes, hands and other parts of the body. As this is an analysis of the first incident of beating, frequency of beating is not considered here.

Table 6.6 Severity of the First Beating

Light injury	Table 6. (cases 1,2,3,5,6,8,9,10,11,12,15,16,18, 20,21,22,23,24,25,26,27,28,29,30)
Moderate injury	4 (cases 4,7,13, 17)
Severe injury	2 (cases 14, 19)

Table 6.5 shows that 80% of the first incidents of violence have been characterised as involving minor injury. This includes slaps on the face,

pushing, striking and kicking, pulling the hair and hitting, and hitting with objects. No obvious marks are left after the beating. The beating lasts for a very short period of time. Quite often it is one act of violence, such as a slap on the face, one kick or one punch. About 13.3% of the beatings in the sample caused moderate injury. These included biting, burning with a cigarette, and beating with a leather belt, causing swelling, burning marks, and scarring. Severe injury occurred in 6.6% of cases. In Case 14, the woman suffered headaches, dizziness, and light cerebral concussion. The woman in Case 19 suffered long-term damage to her waist and muscular atrophy in one leg.

Table 6.7 Date of the First Violence in Relationship to Marriage

Violence for the first time	Number of people	Percentage
Before marriage	1	3%
0 - 3 years of marriage	20	67%
4 - 5 years of marriage	3	10%
6 - 10 years of marriage	4	13%
11 years and over	2	7%

Table 6.7 shows the point in the marriage and relationship when the first incident of domestic violence occurred. In two-thirds of the cases in my sample, the first incident of domestic violence happened within the first 3 years of the marriage. Initial beatings occurred after more than 6 years of marriage in one fifth of the cases and were often caused by the presence of a third party in the relationship; they appeared to be motivated by the husband's wish to get divorced.

6.3.4 Reactions to the First Beating

Women's reactions to the first beating are a very important phenomenon to research, because it not only reflects women's attitude towards violence, but it also affects the way perpetrators behave later. The first beating is the first test for men who bully women. My research shows that if the man gets what he wants, he will repeat the violent behaviour, intensifying the beating in order to control his wife more.

I divide my interviewees into two groups, one consists of women who "tolerate" the beating whilst the other consists of those who fight back. There were 9 women who fought back the first time they were beaten, accounting for 30% of the interviewed. There were 21 women who tolerated the beating, making up 70% of the sample. This indicates that a large majority of women do not fight back the first time they are beaten. The general acceptance of beating as a way of disciplining wives contributes to women's tolerance of violence.

6.3.5 How Did the Incident of the First Beating End?

The first episode ends generally in three ways, as is shown in table 6.8

Table 6.8 Ways of Ending the First Beating

Apology	13 (Cases 13,12,24,9,6,30,26,2,25,23,19,17,29)
Behave better	6 (Cases 21,15,14,10,25,23)
Doing housework	4 (Cases 1,14,10,17)
No apology, but I forgive him.	12 (Cases 16,8,11,27,20,5,3,7,28,22,4,18)

Note: As some cases involve more than one of the above alternatives, the total number is more than 30.

Men in 60% of the cases showed signs of regret and improvement after the first beating in order to ease the tension. 40% of the men showed no signs of apology, but were still forgiven by their wives. The results show that the tolerance of wife-beating in the Chinese society, and in women's sub-consciousness in particular is an important issue to be addressed. It also shows that women do not pay enough attention to the first beating. They tend to think that it is related to the bad mood of the perpetrator or that they themselves have done something wrong, rather than seeing it as the start of an abusive relationship. They explained the first incidents in the following ways.

- "He has a bad temper. After he beat me, everything was fine. I feel I have faults too." (Case 1)
- "I was extremely angry the first time he beat me, but I have never thought of being beaten the rest of my life." (Case 24)
- "I have not thought a lot about it. When he apologized to me, I forgave him immediately." (Case 26)
- "After he beat me, he kneeled down and begged me to forgive him, so I forgave him." (Case 29)
- "The first time he beat me was immediately after our house was robbed. I thought he was not in a good mood, so he beat me." (Case 28)

6.3.6 History of the Beating

In analysing the data, it has become clear that the interviewees can be divided into two groups in terms of the characteristics of the domestic violence they have faced, including: the reasons which first caused it, its duration, its frequency, and its seriousness. The first group consists of those women whose

beating only started after one party had the intention of obtaining a divorce. The other group is made up of those who have experienced beatings throughout their marriage. For the former group, the main purpose of the beating is to force the wife to agree to the divorce. Due to the strong traditional family value, Chinese women will try all means to save their family, for the sake of their own reputation, for the sake of their natal family's reputation, and for the sake of their children. As has been discussed in Chapter 2, the traditional family value still plays a very important role in Chinese society.

(a) Violence starts when one party wants a divorce (group 1)

Six women in my sample experienced violence only when one party wanted a divorce. Five women received beatings because their husbands had mistresses; but in Case 13, the beating started when the woman indicated that she wanted a divorce.

Table 6.9 Frequency and Severity of the Beating (Group 1)

Case	Frequency	Severity	Present Situation
Case 21	Twice a year	Punched, hit head, slap (light injury)	Divorced one year after the beating started.
Case 7	3 times a year	Punch, cigarette burning, tearing clothes in the public (light injury)	In the process of getting a divorce
Case 16	Twice within 4 years	Seized her by the throat, kicked, verbal abuse (light injury)	In the process of getting a divorce
Case 13	Twice a year	Punched face (light injury)	Divorced one year after the beating started
Case 27	Twice a year	Punched and kicked (light injury)	Divorced one year after the beating started
Case 4	Twice a year	Used tools to beat (moderate injury)	Marriage is an empty shell

From the above table, we can see that physical abuse in this group of cases appears to be less frequent and less severe in their relationships up to the point when the violence started. These couples tended to have good relationships. Coincidentally, the 6 couples had also shared similar jobs; therefore they had comparable income and social status. As discussed earlier, the economic situation of men changed dramatically. The women in Cases 4 and 7 became housewives while the husbands established themselves in business. The woman in Case 27 worked in a nearly bankrupt factory, while her husband made profits from economic activities. The woman in Case 16 remained in her original job while her husband became a branch manager. The husband in Case 21 ran an audit office. Only the woman in Case 13 was an exception, because she earned four times more than her husband who did not have a stable job (see below).

Conflicts emerged when women discovered that their husbands had extra-marital affairs with other women. In Case 21, the woman tried to support the family by giving the husband a chance to break off from his mistresses. He wanted to keep both relationships. When the woman confronted him first at home and then at his work unit, the man beat her.

The woman in Case 16 experienced light physical but mainly emotional abuse. Physical beatings happened twice in 4 years. Emotional abuse started 5 years prior to my interviews when the husband had his first mistress. He did not contribute to the family finances and seldom returned home. When he had his

second mistress, he tried to force his wife to sign a divorce agreement. The woman refused, then violence occurred. She described one incident as follows.

"He came back home drunk, with a divorce agreement in his hand. He kicked me and pushed me to a corner, shouting, "from today on, your good days have gone. You must sign. If you do not sign it, none of us can go to sleep tonight. Nobody interferes in family business. I do not violate the law by beating my wife." I tried to phone the police, but he pushed me back to the sofa whenever I wanted to stand up. He cursed me for five hours. I dared not shout for help because of shame. Finally he went to bed. I collected my belongings and escaped from my house. Since then, my daughter and I cannot go back again as he changed the lock of the door."

Five women in this group suffered domestic violence due to the fact that they did not agree to get a divorce, but in Case 13 the reverse was true. The woman in this case raised a claim of divorce and this triggered violence from the husband. Both the husband and the wife were made redundant during the economic reform. The wife quickly adapted to the changed situation by finding herself a new stable job, while the husband failed to do so partly due to his low educational level (high school). The woman earned four times more than the husband. She thought that her husband was unable to provide her with a stable family life and that they had no common interests. When the wife asked for divorce, the husband not only threatened to beat her and kill her, but also made telephone calls to her boss and customers to ruin her reputation.

The violence in this group intensified over time. However, when the wife eventually agreed to have a divorce, the violence stopped. The frequency of violence was obviously less compared to the other group, averaging 2 to 3 times before the marriage came to an end. A characteristic of the intensification of the violence is that it moves from private homes to public areas (Cases 21,

22, and 16). The consequences of the violence become more and more serious, resulting in an attempted suicide (Case 27) or periodical depression of abused women. (Cases 4, 16, 21, 27).

(b) The purpose of the beating is to enforce power (group 2)

The remaining 24 cases in my sample can be put in the category of beatings for the sake of re-enforcing male power. Compared with beatings for the sake of divorce, this group has the feature of suffering from continuous violence, more severe injury, and obvious psychological consequences. The violence is therefore systematic and serious, and constitutes a major infringement of the women's human rights.

Table 6.10 Frequency and Severity of the Beating (Group 2)

Case	Frequency and severity	Beating becomes worse without effective interference
Case 1	Once a week or once a month (moderate injury)	A slap on the face – beat with leather belt – hit eyes causing bruising – cut her jumper with scissors and raped her – threatened her with a knife – file for a divorce – beat with steel stick causing stitches on head and face and injured waist and leg.
Case 2	Three times in two years (light injury)	Beat inside the house twice – beat in front of the public after the woman file for a divorce.
Case 3	Once a month several times a week (moderate injury)	Pushed and shoved – kicked – beat with leather belt – threatened with a knife – forced to cut the tie with her natal family.
Case 5	Three times a week or once a month (moderate injury)	A punch – pulled hair and beat – kicked tripe and caused bleeding for three days – hit with steel stool – beat in her work unit – hit head
Case 6	Once a month (severe injury)	Hit head, eyes, breast, and leg with fist – hit head against the wall and causing prolonged dizziness.
Case 8	Curse everyday, beat whenever he	A punch – a kick – ear perforation – sinew sprained – fractured arm

	gets drunk (moderate injury)	
Case 9	Very frequent (moderate injury)	A slap on face – kicked – threatened with knife – long term depression caused lupus erythematosus
Case 10	Twice a year (moderate injury)	Hit with fist – causing bruising – hit head and caused ear perforation – soft tissue injury
Case 11	Twice a year (moderate injury)	Bruising – bleeding – injury to the nose bone
Case 12	More than twice a year (moderate injury)	Hit and kicked – threatened with a knife – broken arm.
Case 14	From once every half a year to once every two months (moderate injury)	Bruising – headache – lost of memory – damage of hearing for one ear – Cerebral concussion – sexual abuse
Case 15	From half a year to once a month (moderate injury)	Beat with objects which caused swollen face – incontinence of urine – laceration of mouth – kicked out of the house – broken bone in nose
Case 17	Once every two years (light injury)	Kicked and punched – mainly emotional abuse
Case 18	Hard to predict (light injury)	Punched – beat eyes causing bruising – beat with steel stick – hit with a knife and cut her bottom
Case 19	Very frequent/ Serious beating once a year (severe injury)	First beating resulted in permanent waist injury – a tooth was hit out – burned with gasoline causing handicap.
Case 20	Beat irregularly but severely (moderate injury)	A kick – use glass bottle to hit head – cut her with a knife twice
Case 22	Once or twice a year (moderate injury)	Punched and kicked – causing bruising – damage to hearing in one ear
Case 23	Once every several months or more (moderate injury)	Punched and kicked – causing bruising – broken rib – cerebral concussion
Case 24	Once every several months (moderate injury)	Hit with fist – hit with object causing scar on face – Threatened to kill her
Case 25	Three times a month. (light injury)	Punched and kicked three times a month – divorced – no violence for four years after the restoration of a marriage – violence again
Case 26	Once a couple of	A slap on the face – bruising – once a month heavy

	days (moderate injury)	beating (causing bleeding) – forbade the woman to sleep pulled her hair and spat on her – threatened to kill – long-term violence caused serious psychological problems
Case 28	Once every several months (moderate injury)	Punched and kicked – heavy beating caused hematuria waist hurt and poor eyesight
Case 29	Every two or three days (moderate injury)	A slap on the face – punched and kicked – hit face and head with glass bottle – broken mouth and twisted face – hit head on the wall – more than ten stitches on back – urinate on the woman – often beat two or three times.
Case 30	Unpredictable (Severe injury)	Beat frequently – threatened to kill her family members – cerebral concussion---neurosis

There are 4 women in the group who have had light injuries; but the majority of them have suffered moderate injuries (71% of the sample) or severe injuries (12.5% of the sample). The frequency of the beating varies from once every 2 or 3 days to once every several months.

6.3.7 Why Not Leave?

As noted previously, the average duration of marriage of the cases in my samples was 11.9 years, with the longest being 38 years and the shortest 3 years. The average number of years of experiencing violence was 8.95 years; the longest 36 years and the shortest 1 year. This raises the question of what kept these women in an abusive relationship for an average of almost 9 years? The pressures on them must be very powerful for the abused women to endure physical, emotional and sexual abuse for such a long time. There are several major reasons why women stay in an unhappy and abusive marriage, which can be mutually enforcing.

- Maintaining the appearance of family unity seems to be the strongest motivation for women to bear the abuse. This is closely related to the strong family value in Chinese society. Here are the specific examples drawn from my interviews.

"I always persuaded myself to believe that as he does not have a mistress, I should bear everything. When our children grow up, he will be better. The old saying goes like this: the older he is, the less bad-tempered he will be. I have to bear his beating for the sake of the family; otherwise the family would break up when my kids were still young." (Case 8 --- the woman stayed in the marriage for 36 years)

- Staying in the marriage for the sake of the child

Preserving the marriage for the sake of the child is another powerful force to keep women in an abusive marriage.¹⁴ Children are extremely valued in Chinese society. The one-child policy has increased the value of children. Children often become the subjects of conflict between a couple during divorce proceedings. In an abusive relationship, the child is used as a tool through which abusive men seek to control women and make them submissive.

"I could not make up my mind because of my son. Whenever I raised the question of divorce, he insisted on having custody of our son." (Case 9 --- the woman is still in the marriage after 18 years of abuse.)

"My father died when I was 15. I felt very lonely. So I was afraid that my daughter would lose her father. A child with both parents can grow healthily." (Case 5 --- the woman had been married for 3 years. She had no intention to divorce.)

¹⁴ Research made by Dobash & Dobash has similar observations. Dobash, R.E. & Dobash, R. (1980) *Violence Against Wives*, London: Open Books, pp. 148-152.

- Lack of financial support.

Another set of factors leading women to remain in abusive marriages has to do with their position of economic dependency.

"He gives us living expenses. I do not have a job and I need his support." (Case 4)

- No alternative places to go.

In urban China, women usually live with their parents before they marry and live with their husbands after marriage in a house either belonging to their husbands' work unit or their in-laws. Many work units only allocate houses to men. In such a situation, women have less say. Single women, widows and divorced women do not stand on equal footing with men in terms of property rights.

"Each time he ridicules me I speak back. I put up with it all because I have nowhere to go. We share one three-bed room apartment with his parents. If I get a divorce, I can only walk out of his apartment alone." (Case 4)

"Housing is a big problem. If I divorce him, I have nowhere to stay. My father is a very hot-tempered person. I cannot bear to stay with him." (Case 3)

Discrimination in house allocation remains pervasive. A survey of 103 work units made by the All China Trade Union Female Workers Department showed that out of 14,279 apartments allocated in the years preceding the survey, women received 8.7%. More than four-fifths of the housing was

allocated to male workers in the surveyed areas.¹⁵ Another report made by Zhong Xin She (China News Agency) said that 90% of urban women encounter difficulties in finding a place to live after divorce.¹⁶

As a state party to CEDAW, China passed the Women's Rights Law (The Law of the People's Republic of China on the Protection of Rights and Interests of Women) in 1992 to implement its obligation. The Women's Rights Law adopts similar language to that used in CEDAW on property rights. It states "a woman shall enjoy equal rights with her spouse in possessing, utilizing, profiting from and disposing of the property jointly possessed by the husband and wife according to law, which shall not be affected by the status or income of either party."¹⁷ Article 28 states, "The State protects the property rights which women enjoy equally with men." The law also protects common property in case of divorce and succession rights.¹⁸ Article 44 states "The State protects divorced women's ownership of housing". If the wife has no housing to live in at the time of divorce, the husband shall help her.

However, the shortage of housing makes it hard to satisfy the needs of divorced women. Statistics show that "in 1995, 5 million household were living in units where the average living space per person was less than four square

¹⁵ Warren, D. "Chinese Women's Housing Rights: an International Legal Perspective" in Tinker, I. & Summerfield, G. (1999) *Women's Rights to House and Land: China, Laos, Vietnam*, Boulder, London: Lynne Rienner Publishers, p. 172.

¹⁶ *Ibid.* Zhongguo Xinwen She (China News Agency), April 28, 1996.

¹⁷ Article 43, Women's Rights Law, 1992.

¹⁸ Article 29 states, "Women's legal rights to common property of marriage and family brook no infringement. Article 31 states, "The equal property inheritance right enjoyed by women with men is protected by law. Women shall not be discriminated against in the proper order of legal inheritance."

meters."¹⁹ The living space is so small that it is impossible for divorced women to share half of it in accordance with the relevant law.

- The long-term control of abusive men makes women hesitate to divorce.

"He often says to me, 'if you want a divorce, you cannot leave alive.'" (Case --- 17 the woman has been in the abusive relationship for 10 years.)

"A married woman like you is valueless. If you were worth 2000 Yuan before marriage, you are only worth 200 at most now. It is a family matter that nobody wants to interfere with.' He often says this to me." (Case 9 ---the woman is still in the marriage after 18 years of abuse.)

"He threatened me with a knife in order to force me drop the divorce case. I thought he must love me, so I withdrew my pleading for the divorce." (Case 22)

- Public pressure against divorce keeps women in the marriage.

"If I get divorced, people around me would chatter away on a variety of things as if I am the trouble-maker." (Case 12)

"He just managed to transfer my work to Beijing. If I raised the problem of divorce, people would say that I was devoid of gratitude." (Case 15)

- Some women do not leave because of love.

"I loved him. We were in love for two years before we got married. He is clever and handsome." (Case 6)

¹⁹ Wei, Z. L. & Bu, X. "The Housing Situation for Women in Beijing" in Tinker, I. & Summerfield, G. (1999) *Women's Rights to House and Land: China, Laos, Vietnam*, Boulder, London: Lynne Rienner Publishers, p. 225.

- The state protects the marriage of soldiers.

"I wanted to get a divorce ten years ago, but he did not agree. He is a soldier and the state protects the marriage." (Case 14)

- There are disputes on division of property.

When a divorce cannot be reached due to disputes on the division of property, especially housing. Violence may escalate because abusive men feel provoked.

"In February 1999, I went to the court, asking for a divorce. The judge did not process my case. I went back home with my son. I wanted him to give me two rooms to stay in. He said, 'which apartment is yours?'" He had a steel stick in his hand. He hit my head, my legs and my waist. He hit my son too. Neighbours heard my screaming. One neighbour gave my son his mobile phone. My son called the police. The police came. I said, 'my husband beat me with a steel stick.' The police asked my husband why, and my husband said, 'she came to ask for an apartment.' The police asked, 'who is the apartment registered to?' I said, 'his name.' The police said, 'the apartment belongs to him.' The police said, 'you'd better accompany her and the son to hospital.' The police did not write down anything. I hoped the police could punish him. He took us to hospital and paid the medical fee." (Case 1)

The above reasons that force women to remain in the abusive relationship are often occur together. Therefore abused women have to consider practical issues before they make up their mind to leave an abusive relationship. In addition, divorce is still considered a shameful practice. One woman described her feeling about getting divorce.

"I know I have done the right thing. But I feel depressed and self-abused. I have declared to everyone that I made a mistake by marrying my ex-husband. I have lost my confidence, because I feel if I made mistake in the biggest decision in my life, what else can I do well? I feel very bad when my brother was subjected to gossip as the brother of a divorced woman." (Case 2)

This raises a question of whether increasing divorce is the best way to tackle domestic violence, because divorced violent men may soon vent their anger on other women, so that domestic violence will not be reduced in such a manner.

Conclusion

"Industrialisation has not proven to be an unmitigated blessing for women, who are generally incorporated into economic activity not as 'free productive workers' but at the margins, in the informal sector, and as housewives."²⁰ From the data collected, we can clearly see that this group of women benefit (if they benefit at all!) less from the economic reform compared with their husbands. In a patriarchal society like China, men have always been breadwinners of the household. During the economic reform period, this patriarchal structure was strengthened as men gained more power over women. In addition, patriarchal ideology was never replaced by equality despite the government's efforts in promoting equality between men and women over decades. When the government's equality approach took a backseat to economic reform, men who have become empowered by economic benefits wanted to enforce more authority at home. On the other hand, women with a clear sense of equality resisted, which led to violence in the marriage.

The increased income gap and changed social status of a couple breaks the original power balance in a family and causes tension between a couple.

²⁰ Stewart, A. "The Dilemmas of Law in Women's Development" in Adelman, S. & Paliwala, A. (ed.), (1993) *Law and Crisis in the Third World*, London: Hans Zell Publishers, p. 222.

Domestic violence is a reflection of the power imbalance in the relationship. The data indicates strong links between the increase of violence and the deteriorating economic situation of women. This proves that women, when faced with a deteriorating social status and economic dependence, are more likely to be vulnerable to domestic violence.

Chapter 7

Violence Against Women:

A Family Matter or A Human Rights Infringement?

The previous chapter focused on analysing the interplay between women's changing economic situation in China and the ensuing increase of violence in the family. It also presented features of the beatings the women in my interview sample had experienced. This chapter examines the results of my interviews, detailing attitudes—of women and others—toward domestic violence, including their definition of the concept and their sense of grievance and rights in relation to it. What emerges, as I shall demonstrate, is a picture of a varying and shifting sense of 'rights' among women in relation to domestic violence which, in some respects reflects similar changes in international law and jurisprudence.

The shift in attitudes can be partly justified as a response to the pattern of domestic violence which women experience. Many women do not regard beating as domestic violence upon its first occurrence. As the violence becomes a prolonged and intensified practice, women also undergo a kind of "awakening". During this process, they not only develop their own ways of coping with the violence, but also gain a better understanding of their problem: "The way in which experiences become grievances, grievances become

disputes, and disputes take various shapes, follow particular dispute processing paths, and lead to new forms of understanding."¹

In their seminal study, Felstiner, Abel, and Sarat identify a number of stages to this development in disputes and dispute processing. "Naming may be the critical transformation; the level and kind of disputing in a society may turn more on what is initially perceived as an injury than on any later decision"² Understanding that their men are the wrongdoers is a crucial step for women to impel them to seek help from outside. In my interview sample, I found that the process of identifying and labelling violence could take as long as 36 years or as short as 1 year, depending on individuals and their specific circumstances. During the naming process, women adopt several strategies to cope, including fighting back or taking the beating, asking their in-laws for help, going back to their natal family, and making changes to satisfy their husbands.

"The next step (blaming) involves the transformation of a perceived injurious experience into a grievance. This occurs when a person attributes an injury to the fault of another individual or social entity."³ When women view the violence as injurious, they voice their grievance to friends, finding alternative places to avoid the violence, and threatening to divorce their husbands.

The third transformation involves the process of claiming, and is defined as the instance "when someone with a grievance voices it to the person

¹ Felstiner, W. L.F. & Abel, R. L. & Sarat, A. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming..."(1980-1981) 15 *Law & Society Review* 635.

² *Ibid.*

³ *Ibid.*

or entity believed to be responsible and asks for some remedy".⁴ During this process, women go to work units of both sides, to women's federations and neighbourhood committees, and to the police. The attitude that violence should not be tolerated and the belief that their men cannot change are essential steps for these women to decide to walk out of the violence. External intervention plays an active role to help women. This and the following chapter will trace this process in greater detail.

7.1 Attitudes Toward Domestic Violence

7.1.1 Women's' Attitudes

(a) Women from violent family backgrounds

Initial attitudes toward domestic violence among the women who are beaten appear to be influenced by their own family background. Six women among the 30 interviewed came from violent families. Their initial attitudes to violence appeared to reflect their matter-of-fact acceptance of it. This attitude was displayed by three women (Cases 1, 3 and 6) who saw such violence as normal:

"My father has a bad temper. He cursed my mother and beat her each time he got drunk. Sometimes, my mother quarrelled with him, but more often she escaped. I think my father has psychological problems, I understand him. I do not think it was domestic violence because my father never beat us. After quarrelling and fighting, life still went on. I think it was normal for them to fight with each other." (Case 1)

"My father was very strict with us. Even when we grew up, we were still afraid of him. As I have seen my parents quarrelling and fighting with each other all their lives, I have the idea that a family with violence is normal. I thought that my family was the same as other families. I saw my mother bearing everything my father did and I learnt to bear everything too." (Case 3)

⁴ *Ibid.*, pp. 635-636.

"Both my parents have strong characters. They quarrelled when they were young. Sometimes, they beat each other. After the conflicts, they became a good couple again. They discuss things and decide things together. They are equal at home." (Case 6)

Growing up in a violent family, the three women took the violence for granted. A violent relationship is the norm for them. Having observed violence between their parents and internalised their mothers' reactions, they repeat in their own family life what they have learnt sub-consciously in their natal families. The woman in Case 1 had been in a violent relationship for 14.5 years. The woman in Case 3 had remained in the marriage for 15.5 years. The woman in Case 6 had put up with the abuse for 10 years.

In another Case (9), the woman's acquiescence to beatings by her husband could be traced back to the violence against her in her natal family:

"My father is the breadwinner of the family and my mother depends on him. My father drinks wine each day. After drinking he beats my mother. There is no reason for him to beat my mother. When he is not happy, he beats my mother. My mother bears all this because she never thinks of getting a divorce. To her, it is a (public) shame to think of getting a divorce. Growing up in such a family, I am quite introverted and meekly submit to oppression. When they quarrelled, I persuaded them not to, but [it was] no use. I told myself I should never find a boyfriend who drinks alcohol. I did not want to find a rich boyfriend, but one who really loved me and treated me well. I hoped there would be no violence in my own family." (Case 9)

The father of the latter woman is an alcoholic. Whenever he drinks, he curses his daughter and beats her mother and brothers. As she said, growing up under the abuse of the father, both her brothers and her were weak and became easy prey to bullying. This woman had been in the abusive relationship for 18 years,

in spite of discovering that her husband had had an affair with his sister-in-law soon after the marriage. She described her married life as "extremely lonely; no love, no sex, nothing."

In another Case (26), the woman adopted a fateful attitude to the violence she faced based on the experience of her mother:

"My father used to be a worker in a factory while my mother was a housewife. My mother was a very capable woman. She did everything in the family. She had a good temper and treated people equally. My father has a bad temper. He used to quarrel with my mother about minor things in the family. Each time such things happened, my mother cried. He beat my mother with his fist. My mother bore all these assaults. When my elder sister felt so angry about my father that she wanted to quarrel with him, my mother would stop her. She told us that she did not want a divorce because she did not want us to lose our father. My mother died when I was in high school. I am an unlucky woman, because my mother died early and my husband treats me very badly. My fate is not good, but I have to follow my fate." (Case 26)

Compared with women from non-violent families (see below), this group of women tends to be more passive, tolerant, and obedient, therefore they stay in the abusive relationship much longer than the average within my sample (13.3 years compared with 8.95 years). Their attitude to beating is also very passive and fatalistic. All of them tolerate beatings rather than fighting back. The woman in Case 3 said,

"Growing up under such family circumstances, I normalised the fighting between my parents and the fighting between my former husband and me. If I had grown up in a non-violent family, I would not have been able to bear it for so long. When I told my classmates what had happened between us after the divorce, they were all shocked, and asked 'how could you manage to cope for more than 15 years?' "

All 6 women mentioned the reaction of their mothers to the violence of their fathers. All of them said that they were very much like their mothers in dealing with the violence, including the attitude to the beatings, reaction to the beatings, and their coping skills. This is a process of reproduction of abused women. The only difference is that their mothers stuck to the marriage due to the strong traditional view that divorce brings shame to the whole family. Unlike their mothers, 5 of the 6 abused women⁵ struggled between getting a divorce and remaining in the abusive relationship. They all filed for divorce twice, meanwhile when their husbands showed signs of improvement, they decided to remain in the marriage.

With China's opening up to the international world, people's attitude towards marriage has also changed. Although the old tradition of marrying once in one's entire life still plays an important role in society, the new ideas of enjoying sex and life are also becoming popular. During this period of mixture of the old and the new, women experience more inner conflicts with regards to decision-making. Surprisingly, more than 50 years of mass education on the equality between men and women have added to the suffering of this group of women. On the one hand, the shame of divorce keeps them in the marriage. On the other hand, the physical and psychological sufferings of being beaten forces them to take action, while the sense of equality makes it hard for them to accept the reality willingly. Other practical issues, such as financial arrangements,

⁵ One woman got married a second time, so she said she had no intention of getting divorced again.

housing, division of property and fostering of children, make divorce proceedings even more difficult and complicated.

It is interesting to note that there was an even stronger link among the interview cases between men who commit domestic violence and those drawn from violent family backgrounds. One third of the perpetrators came from violent families:

- "Your father-in-law beats me all the time. My son is like his father. Stand it." (The mother-in-law said to the woman in Case 15)
- "His father always beats his mother. Every day, his mother must get the meal ready right on time and serve it to his father." (Case 11)
- "His family is different from mine. His parents curse each other and fight with each other." (Case 5)
- "His mother was beaten by his father all her life, even shortly before she died. It is all about daily life. If his mother says it should be put here, his father wants to put it somewhere else, and a beating is unavoidable." (Case 29)
- "His mother causes mischief. His father beats her. No use. They always fight with each other." (Case 19)
- "All three children in my husband's family grew up under the beating of his father." (Case 17)

Family background has an obvious influence on both abused women and abusing men. Abused women get used to the abuse because they have seen many incidents of it in their natal family; therefore they are more likely to accept violence in their own family. Growing up in a violent family, men follow their fathers' lead and become abusive to their wives.

(b) Women from non-violent families

Except 6 women whose parents' relationship was not clear, there were 18 women interviewed who came from non-violent families. In general, their reactions towards beatings were much stronger. None of them thought that being beaten by their husbands was normal. None of them accepted the beating mentally. This group also tended to be more active in seeking help from relatives, friends, and organisations, the first time they were beaten.

For some women (Cases 2, 12, 13, 21 and 24), beating was unacceptable simply because it had never happened to them before:

"In March, 1997, he beat me for the first time. I cannot remember the direct cause for him to beat me. It was only a minor thing. He slapped me on my face. I fought back immediately because I felt extremely angry, as nobody in my family ever beat me. However he is a strongly built man. I am not his match. I realised then that we were not a good match and our marriage was doomed to be a failure. He apologised to me after the fight, however I refused to listen. I felt extremely sore in my heart. I did not talk to him for days." (Case 2)

"My parents never quarrel or fight with each other. They are a good couple. We quarrel frequently, and we fight with each other. As my parents never beat me, I cannot stand the beating, so each time he beats me I fight back." (Case 12)

"Both my parents do research work in the army. Our living and studying conditions are quite good. My parents seldom quarrel. They never fight with each other. My [natal] family atmosphere was quite harmonious, so I value a good family atmosphere. My husband and I did not have common interests. When I raised the question of divorcing him, he beat me. He pushed me to a corner, smashing my face. I pushed him away and tried to escape. He locked the door. I tried to fight back, but I was not his match. At that moment, I strengthened my resolve to divorce him." (Case 13)

Women taking this view do not tolerate beatings. They are more determined to end the relationship as soon as possible. All 5 women in this group have sorted

their problems out by divorcing their husbands within 5 years. Three ended their marriage within 1 year of the date when the first beating occurred.

There are several essential elements for these women to speed up the process. First of all, their attitude towards the beating was very clear: they did not tolerate it as nobody had ever beaten them before; they all came from non-violent families. Secondly, they were all financially independent. Three of them had stable jobs with monthly incomes, while one was self-employed and owned enough stocks. Thirdly, constant family conflicts made the husband less attractive to the wife. Four of the women mentioned that they had fallen out of love with their husbands. Fourthly, these women enjoyed strong support from their natal family. The attitude of the natal family is one of the decisive elements for women in deciding to stay or leave the abusive relationship, because the natal family not only provides spiritual support but also housing. Two of the 4 women stayed with their natal family after the divorce. The function of the natal family will be discussed in detail below.

In other Cases (5 and 14), women viewed domestic violence as unacceptable since they see it as stemming from unreasonable demands of their husbands:

"My parents are peasants. I have an elder brother and an elder sister. My parents loved each other. They led a harmonious life together. Unfortunately my father died early. My mother was so sad that she lost her memory for one year. We were educated to be kind to people and to respect the elderly including parents. I wish to lead my life as my parents lead theirs... I fought back the first time he beat me, because I thought it was not my fault to bear a baby girl. Each time he beats me, I fight back." (Case 5)

This group of women realised that being beaten was not their fault, rather it was because their husbands made unreasonable demands. They were quite active in seeking help from the outside world.

Other cases displayed the attitude that beatings were unacceptable for a variety of reasons:

"Everyone has his/her rights and freedom. He beats me because he has a mistress. I want a divorce." (Case 7, and see also Case 10)

"He is very capricious. He does whatever he wants. Nobody can criticise him. When I want to stop him doing something, he beats me. I am his wife, a member of his family. He should not beat me. He treats his wife so cruelly." (Case 22)

There was also a further group (Cases 8, 11, 15, 17 and 20) who simply said that they could not stand the beatings and wanted a divorce. Even when the latter option was rejected, this did not necessarily indicate an accepting attitude toward the violence:

"We used to be an affectionate couple. He started to beat me when he had the first mistress. I did not tell anybody, because I did not want a divorce. When his relationship ended with that woman, our relationship improved for half a year. Then he had his second mistress. Our relationship deteriorated again. He forced me to agree to a divorce. I did not want a divorce. I often recall those tender moments we shared before. My friends told me he would come back to me two or three years after he got tired of the affairs. I tolerated everything. When he beat me, I did not fight back. When he cursed me, I did not respond." (Case 16, see also Case 4)

However, even among those from non-violent family backgrounds, some seemed to accept violence as a natural part of family life:

"He has beaten me for 38 years. I had never thought of seeking for protection before. People often say it is an unalterable principle for a man to beat his wife." (Case 8)

Women's reactions and their strategies for coping with violence are closely related to their attitudes to the beatings. Case 7 was an old lady of 59 years. Her belief represents the general attitude of the elder generation to family violence. The belief kept her in the marriage for 36 years, until one day her husband broke her arm and declared that she had no right to share the property. She suddenly realised that she needed to take action. Women who take the same view as in this case are less likely to seek help from agencies and organisations.

7.1.2 Family Attitudes

(a) Natal families

The natal family of abused women is often the first resource for them to seek help; from it these victimised women receive emotional and psychological support. Some of them use their natal family as a refuge. Therefore, the attitude of the natal family towards domestic violence plays a crucial role in women's attitude towards it and their decision making process. Generally speaking, women's natal families tolerate violence and persuade women to behave better in order to avoid beatings at the beginning. The degree of tolerance varies depending on family background. Those natal families where domestic violence exists normalise the violence, so parents from such families frequently persuade their daughters to stay in the marriage. Non-violent natal families tend to mediate between the conflicting couple by persuading the husband to stop the beating and by supporting their daughters to end the abusive relationship when the violence escalates to a certain degree, such as causing light bodily harm.

Getting divorced is considered as a shame to women as well as both families. It is one of the major reasons for them to keep the marriage going.

As indicated, mothers who themselves have been in violent relationships tend to normalise and tolerate violence. They educate their daughters to accept it and remain in the marriage.

"The first time I went back to my natal family, my mother told me that I should not go back to my natal family at every turn. I told her the real situation. She talked with my husband. My mother said, 'Two of you are equal. You should discuss things together. You should spend your time studying instead of fighting with each other.' She also wrote him a letter, persuading him stop beating me. My husband wrote a guarantee letter at that time. However, he cannot change. My mother said to me, 'Three years in the marriage is the adapting period. Six years is the dangerous period. Eight years still has the hope of winning the marriage.' As my mother said, I always hoped to win the marriage. Nearly sixteen years later, I know I am not going to win." (Case 3)

The woman in Case 3 was encouraged by her mother to be patient with her abusive husband and wait for him to change. The mother herself remained in an abusive relationship until she died. Almost sixteen years later, the woman realised that she would not be able to sustain the marriage. They finally got divorced.

The woman in Case 1 went to her natal family after each beating. She took her natal family as a refuge. Her mother knew everything. She always criticised her daughter.

"My mother thinks that it is normal for a man with a bad temper to beat his wife. My mother always persuades me to go back home. She often says to me, 'He marries a wife. The wife stays in her natal family. He is like a bare-stick. Of course, he beats you. Have you seen your father beating me? Every man has a bad temper.' My mother influences me deeply. She accepts everything, and so do I." (Case 1)

The mother always persuaded the daughter to do more housework, to take care of the husband better, and to stop chattering. The woman in Case 1 also stayed in her sister's house. She told her sister and brother about the beating. They mediated three times, but to no effect. The brother said to the husband, "You should not beat her. The children have grown up and you have been allocated a new apartment. You should discuss things when you have conflicts." While the brother was talking, the husband came to kick the woman. The brother got so cross that he slapped the husband because the husband dared to beat the woman in front of her natal family. The conflict escalated as the husband got hold of a kitchen knife, threatening to kill them.

The woman in Case 9 also used her natal family as a refuge. Whenever she was beaten, she escaped to her mother's house. Her mother was a very traditional rural woman who believed in the idea that once a woman gets married, she should follow her husband all her life. When the woman discovered that her husband had an affair with his sister-in-law, she told her mother that she wanted to divorce him. The mother insisted that she should remain in the marriage. She said, "He gives you money and he takes care of the child. Make it do. What a shame to get a divorce! I can bear everything, why cannot you?" The two brothers of the woman dared not interfere in her family affairs as they had weak characters due to their father's violence.

Mothers from violent relationships do not view violence as a human rights issue, but rather as a family matter, therefore they encourage their abused daughters to remain in the relationship. The tolerant attitude of mothers passes

down to their daughters, and becomes a barrier for daughters to seek outside help.

Interestingly, the attitude of non-violent natal families also frequently showed tolerance to domestic violence, which indicates that it is the cultural heritage that requires changing. In a number of such cases, when the abused women went back to their natal families and told their stories, their parents criticised them for not fulfilling their family duty. They were told to do more housework, to take care of their husbands and children better, and to improve in order to satisfy their husbands.

"Half a year after we got married, I got pregnant. He did not want the child while I insisted on having it. He beat me, so I went back to my natal family. My parents said to me, 'You should do more housework. You should overcome your shortcomings and deal with family matters properly.' After he tore my mouth [requiring] five stitches, my parents realised how serious the beating was, so they told me to get a divorce. Then I was transferred from my hometown to Beijing, where he works. We were allocated a two-bed apartment. My mother said to me, 'For the sake of your son, compromise.' " (Case 15)

As the natal family of the woman took the attitude of tolerating the violence, they supported their daughter to remain in the marriage until the beating escalated to more severe and frequent torture. She ended up with a broken nose, which is classed as light bodily harm according to the criminal law. She was deprived the right of using water, electricity and gas in their jointly owned apartment, and was finally kicked out of the place.

"The first time he beat me, my mother was at the site. She stopped the fighting. Later she said to me, 'It is your fault. You have not taken care of him well when he is sick at home; otherwise he would not have another woman. You should think about your fault first.' " (Case 21)

"My parents know that he beat me. They always blame me for not performing my role well in the family. They never criticised my former husband for his behaviour." (Case 22)

The traditional cultural legacy we have discussed in Chapter 2 still has a heavy influence on Chinese society. Natal families give tacit consent to wife beating, which indicates that disciplining a wife by beating is seen as natural and acceptable.

Keeping the family together is the primary goal of the natal family, because getting a divorce is still considered a public shame to the whole family. Therefore the natal family tries every means to maintain the marriage, even sacrificing the happiness and safety of their daughters.

"I told my parents that he beats me and his parents take sides with him. My mother said to me, 'No couple live together without fighting. You should get along well.' He has a mistress and he broke my nose. My father still thinks it is my fault for getting a divorce in such a hurry." (Case 11)

"He has a mistress. He kicked me out of our apartment for two years. My father told me, 'As long as he comes back, we would not say anything.' My mother said to me, 'You used to be an affectionate couple. Try your best to move him. Watch TV series, even the worst man can be moved to change.' " (Case 16)

The natal family that takes the view the couple should stay together no matter what happens rarely interferes in their daughters' marriage. In other words, they do not talk to perpetrators in order to persuade them to stop the violence. Such an attitude in fact fosters the violence.

On the other hand, some natal families take active actions to stop the violence by talking to perpetrators. This tactic tends to have only a short-term effect.

"My mother talked with him several times. She said, 'It is wrong for you to beat her. We, her parents never beat her. We point it out to you. Hope you could discuss things together instead of fighting.' He said, 'You know I have a bad temper. When I get it, I cannot control myself. When it is over, it is over.'" (Case 10)

"The first time he beat me, he dragged me to my parents for them to judge between right and wrong. My mother told me, 'You should do more housework and be considerate of him.' I told my mother he beat me. My mother said to him, 'It is not right for you to beat her. We have never beat her.' He tried to reason why he beat me, and my mother kept silent." (Case 2)

"My mother and sister criticise him many times. He apologises but cannot overcome it." (Case 24)

Two families in my sample supported their daughters to get a divorce:

"We did not have common interests. Gradually he lost attraction in my eyes. When I decided to live separately from him, he started to beat me. I told my parents what had happened, together with the fact that he damaged my virginity by plugging his finger into my vagina. My parents' attitude was quite firm. 'It is too much. You cannot lead a life like this.' They took a photo for me to keep as evidence." (Case 13)

"My daughter told my brother about the beating. My brother phoned him to criticise him. It was not effective. His family forces me to get a divorce so that he could marry again and have another chance to bear a son. My brother and sister arranged my marriage. They regretted placing me in an unhappy marriage. They supported me to get a divorce. My brother said he would support me for the rest of my life if I got a divorce." (Case 5)

(b) Husbands' families

The attitude of the husband's family to the violence is to encourage and connive in it. Such an attitude creates a good environment for domestic violence to be

nurtured. It is also closely related to thousands of years of patriarchal history. Popular Chinese sayings illustrate the legitimisation of wife beating. "If you do not beat your wife for three days, she will climb up to the roof and destroy the house."⁶ Such sayings indicate that women need to be monitored by their men constantly, otherwise they will transgress. Another popular saying is "beating is intimacy and scolding is love". The acceptable and tolerant attitude of the whole society towards the issue makes it a deep-rooted legacy of the Chinese culture. In my sample, 12 of the husbands' families were not mentioned due to the fact that either the husband's families were far away or they did not have a close relationship with their families. Among the remaining cases, in only 2 did the parents of the husband try to stop the violence, or later criticise the man in front of the wife.

Some of the husbands' families even lent a helping hand for perpetrators to beat their wives:

"I wanted to stop him from gambling. We fought with each other because of this. His mother dragged me so that he could hit. They encouraged him to gamble and tempt other women." (Case 20)

"He broke my head with a nailed board. His parents were in another room. They heard me screaming, but they did not come out. Since then, his parents also beat me" (Case 4)

"By the end of year 2000, he was in hospital. He wanted me to accompany him before he had an operation. I had my little daughter at home, so I did not sleep with him. He cursed me in front of other patients. When he went back home, he pulled my hair and beat me. His elder sister helped him beat me. He kicked me and I bled for three days." (Case 5)

⁶ This is a well-known saying in China.

In other cases, wife beating was openly encouraged by the husband's family as a means of training a virtuous daughter in law:

"'You are trash. You marry a woman, but you cannot control her. You complete trash!' My mother-in-law always winks at my former husband to beat me. When she was a daughter in law, she was beaten up, so she pushed her son to beat me into becoming an obedient daughter in law." (Case 12)

"His father often tells him, 'Somebody slaps his woman right on her face in public. What a real man!' " (Case 2)

"His mother thinks all housework belongs to women. One day I asked him to fold up a quilt. His mother was not happy about it, she cursed me, 'you lazy cow, what is the use of marrying you if you stay idle like this?' I fought back the first time he beat me, because I thought it was not my fault to bear a baby girl. I phoned his mother three times, hoping she could persuade him to stop beating me. His mother said, 'you deserve the beating because you gave birth to a girl. You depend on my son, you deserve the beating.' His mother has found another woman for him. She hopes that her son can divorce me and marry that woman so that they can have a chance to bear a boy." (Case 5)

"I told his father that he was idle all the time and he did not take care of the child. His father went back to tell his mother. His mother was not happy about it. She came to our place and talked with her son separately. Then my former husband started to curse me. When I talked back, his mother told him to beat me. He knocked one of my teeth out and broke my nose." (Case 19)

Some of the husbands' families do not openly encourage the beating, but their attitude to the beating can be seen as encouraging because they take the husband's side:

"His parents know that he beats me, but they do not stop him. Once we had a meal together. I prepared some flapjacks to take back to my natal family. My husband satirised me, 'The taste of your natal family is too good to appreciate the flapjacks you made.' I talked back. He kicked and punched me in front of the whole family. His father said, 'He speaks out what he thinks. What on earth are you unhappy about?' We had a big fight because of this." (Case 22)

"His father came to our place to mediate. He did not criticise his son. He said, 'This is his character. He just has a bad temper.' His mother wanted me to bear all this." (Case 15)

Husbands' families, especially the parents, do not intervene in the beatings. When beating occurs in front of them, they either turn a blind eye or walk away.

"Once he beat me in front of his mother. I tried to hide behind his mother. His mother did not protect me. She found an excuse to leave immediately." (Case 11)

"I told his father he beat me. He said he had no time to talk to his son about it." (Case 1)

The tolerant attitude of the natal family, together with the connivance of the husband's family, creates a powerful family control system, which not only normalises the violence but also discourages women from seeking help from the outside.

7.1.3 Attitudes of Friends and Neighbours

The attitude of friends and neighbours to domestic violence can be less tolerant than those of the natal family and the husband's family. They may either encourage women to leave or provide useful information for women to seek help outside of the family.

"My classmate came to see me in 2000. She was shocked. She said to me, 'How come he beats you like this? Do you really want to bear his beating the rest of your life until he beats you to death?' My face is not symmetric because of the beating and both of my hands have been twisted." (Case 29)

The woman's classmate persuaded her to leave the abusive man. This pushed the abused woman to rethink her marriage. It was a positive stimulus for her to get out of the control of both families.

"My neighbours told me that the new marriage law outlawed wife beating. I could find a place to help me out. They told me to come to WLSSC. I used to think that nobody interferes in family affairs. I had never heard of domestic violence before. I asked my neighbour to write it down for me in order to remember it. I have always thought that divorce is a shameful thing for a woman. Now I think that getting a divorce is not embarrassing, because I divorced him to protect myself. My sister tried to persuade me to drop the case. She said, 'If the police arrest him, the children will be unhappy about you.' I told her, 'I am already over 60. I am going to lead the life of a human being before it is too late.' " (Case 8)

The woman filed for divorce with the help of lawyers at WLSSC. She wanted her husband to take full responsibility for breaking her arm and abusing her for 38 years. Without the help of neighbours, she might still think she had nowhere to go for help and she might have no sense of her own rights as a human being.

"My former colleagues came to see me that day. They saw my black and blue arms and neck. They all supported me to get a divorce. My natal family does not agree with this decision for the simple reason that I do not have a place to stay." (Case 4)

"I told my friend what kind of life I led. She said to me, 'Get a divorce. How can you lead such a life?' So I filed for divorce at the local court. The civil court asked me to pass them a letter. When I came back, my husband treated me very well. He promised never to beat me again. So I did not show him the letter and I dropped the case.' (Case 19)

"Last night I was beaten up. My colleague told me to come to WLSSC. She told me it was better for me to get a divorce." (Case 5)

Generally speaking, friends and neighbours are more helpful than natal families of abused women and husband's family. However, two cases in my sample show the opposite. In Case 9, the woman talked with her friend about her husband's love affair with his sister-in-law and the violence in the marriage. The friend told her, "for the sake of the child, stay with him." In Case 19, neighbours knew that the woman was burnt at home, but nobody reported it to the police.

In summary, both sides of the families of abused women nurture the violence. This collusion represents a strong barrier for women to break. Friends and neighbours can play an active role in allowing women to break the barrier. With the implementation of the Marriage Law 2001, more and more people will become aware of sources available for help. They will act as valuable information providers for abused women. However, they can only act as an external force, which can take effect through internal desire of abused women. The changing attitude of both natal families and husband's families is crucial to breaking the chain of abuse.

7.2 How Do Abused Women Define Domestic Violence?

How abused women define domestic violence is an important but often neglected issue. One of the reasons for abused women not seeking outside support and staying with abusive men is that it takes them a long time to name

what is happening to them as violence.⁷ It is a complicated process for abused women to recognise and name men's violence as abuse.

Quite a number of women define domestic violence as visible injuries. They do not define the acts of a slap on the face or pushing and shoving as domestic violence. In a word, they only categorise certain degrees of violence as violence and exclude minor incidents.

"Fighting over minor daily things is not domestic violence. Cursing every day or beating resulting in permanent disability is domestic violence." (Case 20)

"(If) he beats me to a mortal wound, (it is) domestic violence." (Case 12)

"(If) he beats me black and blue, it is domestic violence. A slap on the face or pushing and shoving is not domestic violence." (Case 3)

"I used to think that domestic violence was beating that resulted in broken arms and legs, because when I filed for a divorce, the judge did not grant us the divorce for the reason that I did not have evidence of being beaten. So I thought (if) he beat me with fists it did not belong to domestic violence." (Case 1)

These women consider beating that causes visible injuries as violence. This partly explains why it takes them several years to seek outside help, as violence often starts with less frequent and light beatings and it takes time to get worse. In Case 1, the woman gained the idea that only severe beating was categorised as domestic violence through the judge. This exposes the lack of a guideline for law enforcement institutions in dealing with domestic violence cases. Before the Marriage Law of 2001, there were no official definitions of domestic

⁷ Kelly, L. & Radford, J. "Nothing Really Happened: the Invalidation of Women's Experiences of Sexual Violence" in Hester, M., Kelly, L. & Radford, J. (1996) *Women, Violence and Male Power*, Buckingham. Philadelphia: Open University Press. p. 18.

violence; therefore law enforcement organs such as the court and the police tended to ignore this element in their daily work.

The women I interviewed tended to recognise physical violence that resulted in obvious marks as domestic violence. This indicates that they only took it as violence when it escalated to severe violence. When the violence escalates to the degree that they feel they are in danger and they are incapable of handling it, they will immediately seek outside help.

Only one third of my sample mentioned the emotional harm that they endured in the abusive relationship. This illustrates the fact that the majority of abused women have not recognised psychological abuse as a form of violence and its long-term effects on them. One woman said, "Beating me is domestic violence, but cursing me is not domestic violence" (Case 1). As a matter of fact, it has been shown that physical violence is always accompanied by psychological abuse.

By reading the interview transcripts, I found that 8 women experienced sexual abuse. However, when answering the question "what is domestic violence?", only three women included sexual abuse in the definition. This shows that abused women do not recognise sexual maltreatment as abuse, because they regard sex as their marital duty. As feminist researchers have pointed out "there are numerous ways in which women's experiential knowledge is denied, invalidated and forced underground, ways which change and adapt to cultural and political circumstance".⁸ Chinese women's sexuality

⁸ *Ibid.*, p. 20.

has long been suppressed by the cultural tradition of "three obediences and four virtues".⁹ To subordinate herself to the husband physically as well as psychologically is praised as a virtue of any good woman. It is considered the business of bad women to publicly discuss sexuality; therefore women tend to keep this matter as a secret. The attitude of the Chinese government towards it is reflected in the Marriage Law 2001, where sexual abuse is not stated clearly in the definition of domestic violence but vaguely included in "other states" caused by domestic violence. Such incidents are rarely given publicity in the media.

One woman in my sample was deprived of sex for 18 years, because her husband refused to have sexual intercourse with her several months after the marriage began as he had a mistress. Can her experience be defined as sexual abuse? According to Liz Kelly's definition, which I quoted in the introduction, the husband takes away the wife's ability to control intimate contact; therefore it is sexual abuse.¹⁰ However, in my sample most women's definition of domestic violence was only about physical violence.

Analysis of my data shows that abused women minimise the violence they experience. Their definition of domestic violence is limited to physical violence resulting in obvious marks afterwards. Abused women had not fully recognised psychological and sexual violence by the time I conducted my

⁹ This has been explained in chapter 2.

¹⁰ Kelly, L. (1988) *Surviving Sexual Violence*, Polity Press, p. 41. She defines sexual abuse as "any physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact."

fieldwork. In order to be able to talk about something and then do something about it, one must be able to define it. Only if women understand it fully can they help themselves, let alone seek help from the outside.

By comparing the definition of domestic violence in the Chinese Marriage Law 2001 with the definition proposed by the United Nations, there are gaps worth highlighting. The definition of the Marriage Law 2001 excludes threats of any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women. The Chinese version also obscures sexual abuse and limits the violence in the context of family members in the same household, which significantly narrows the UN definition.

7.3 Women's Sense of Rights in Relation to Domestic Violence

"Right-language" is a supplemental language to the many distinct "mother tongues" of the world. It is open and empty; different cultures fill it up with specific, concrete forms of the values of freedom and life. Right-language also provides the institutionalised procedures through which people have recourse to values; it is "the language of conflict-management within the socio-political arrangement of symmetric reciprocity. This language and this arrangement, says Heller, are both universalizable."¹¹

¹¹ Flood, P. J. (1998) *The Effectiveness of UN Human Rights Institutions*, Westport: Praeger, pp. 10-11.

But rights can be understood at a number of different levels. One relates to general violations that raise issues of wider public concern. It is in this sense that the term 'human rights' is normally understood. On the other hand, people can have a more personalised and individual sense of their rights having been violated, without this invoking a sense of wider public wrong. The latter can relate to the view that domestic violence is purely a family matter.

How do Chinese women view domestic violence in terms of their 'rights'? Do they view it as an issue of rights at all? When asking the question of "Did you think he had the right to beat you when it happened the first time?", fourteen women said that at this stage they had never thought about it in terms of rights. Sixteen women said that they thought the husband had no right to beat the wife. Although nobody in my sample thought wife beating was right, the understanding of the issue varied a lot.

There was one group, consisting of 11 women in my sample (Cases 2, 4, 10, 13, 14 17, 21, 22, 24, 25 and 26), who saw domestic violence as a violation of their wider public rights and who related it to issues of sexual equality and human dignity:

"We are equal. Quarrelling is understandable, but beating is unbearable. A couple should live equally together. Beating ruins the relationship. There is no love. He takes me as a sex tool. I cannot bear this kind of life." (Case 24)

The woman in Case 24 got divorced one year after the beating started. This group of women has a strong sense of equality. This is related to the equality approach the Chinese government adopted since the founding of the PRC.

"He has no rights to beat me at any time. One has one's personal rights. I stay with him because I cohabited with him before the marriage and I have to take him as my husband. In addition, I have nowhere to go. My stepmother does not allow me to go back home." (Case 26)

"Being beaten makes a person lose her dignity. One is born to have the right of being protected against physical violence. Dignity is more important than love. I cannot bear to live with a violent husband." (Case 2)

"He has no right to beat me, because one person has no right to beat another. It is against law to beat people." (Case 4)

Women in this group have a clear understanding of their rights, which they define by declaring that husband and wife are two equal individuals at home who should enjoy equal rights.

The language of 'rights' can also be used in a more personal, inter-familial sense, as illustrated in a number of further cases:

"I am a taxi driver. I worked for twelve hours a day at that time, because I had bought the taxi and had to pay the money back. He works in a factory and his salary is very low. I do not require him to earn more, on the contrary, I always remind him to be clean because he has lots of opportunity to take cheques from his factory. The first time he beat me was because of his mother. I took our daughter out for more sunshine. My mother in law complained to him that it was high time for my daughter to have a meal. When I came back, my husband shouted at me. I wanted to eat steamed bread instead of leftover noodles; he did not allow me to eat. I thought I earned money to support the family. Now my right to eat was taken away. He beat me. I fought back. If I am wrong, you tell me. I would improve. You cannot beat me." (Case 12)

"He has no right to beat me. Raising a hand is not right between a couple. He beats me because he has a mistress. I want a divorce." (Case 7)

"He does not contribute to the finance of the family. Whenever I want money from him, he beats me. He gambles. When I try to stop him doing it, he also beats me. He has affairs with other women and his patients. When I mention it, he beats me. He is a

bastard. He knows that he would not pay a price for the beating, because I dare not to tell my parents. I have no brothers and sisters to support me. I told my mother I hurt myself when my face was beaten to swollen." (Case 14)

These women see the beating as unjustified in their particular family circumstances rather than as a more general violation of rights.

"The third day we got married, he beat me because he did not like the pillows my natal family gave us as presents. I went back to my natal family for help. He came to my natal family, apologised and promised not to beat me again, so I went back with him. He has no right to beat me, because it is not right to beat people." (Case 23)

This woman's tone sounded more like educating her young children that "it is not right for you to hit your younger brother" rather than viewing domestic violence as wider human rights issue.

In another case, the woman appeared to relate her sense of grievance over being beaten to a breach of promise rather than as a more generalised violation of her rights:

"He has no right to beat me, because he promised my elder brother before we got married that he would never beat me. He broke his promise." (Case 6)

Altogether, 11 women believed that they should enjoy equal rights with men. Beating made them lose their dignity. Women's strong sense of equality comes from the long efforts of the government to build up an ideology of equality between men and women, including legislating to that effect. However, inequality in real life contradicts the ideology of equality, therefore causing more conflicts in married life.

The feudalistic ideology that supports the view of men as having the authority to discipline women still exists in many men's mind and is recognised by women. This results in a prolonged process for some abused women from experiencing self-blaming and self-improvement, to gradually realising their husbands are the faulty parties, and then taking active steps to solve the problem. Therefore uprooting the wife-beating culture is very important to reduce the phenomenon. The core of uprooting the wife-beating culture is the recognition of the general public that men have no right to discipline women by beating them and that wife beating is not tolerated by women.

The 14 women who answered that they had not thought about the beating in terms of rights gave me the following answer.

"A woman follows her husband no matter what his lot. I did not think about it in terms of rights. After the beating, he knelt down to beg me for pardon. So I forgave him." (Case 9 and 29)

"I did not think a lot about it. I only thought that he was in a bad mood." (Case 28)

"I lived with him wholeheartedly. I did not think more than that." (Case 3, 15, 30)

"If he could stay with me, I would not mind about the beating. I still love him." (Case 27)

The woman in Case 27 is heavily influenced by traditional Chinese culture. She loved traditional Chinese poems and believed in the three obediences and four virtues. She said that it was really a public shame for her to get a divorce, because she had never thought of being dumped by her husband. She would rather bear the beating than get a divorce. The women in Case 9 and Case 29

held the traditional view that a woman follows her husband no matter what his lot.

Only one-third of women in my sample defined domestic violence initially as a human rights issue, while two-thirds of them view it as a family issue or inter-personal issue. Those in the latter group eventually changed their view. The following answers reflect the changed attitude of this group:

The interviewer: 'Do you think he has a right to beat you now?'

- The interviewees: (1) "Now I think he has no right to beat me, because we have women Protection law. Somebody will intervene in it" (Case 8)
- (2) "He has no right to beat me. I feel we are not equal if he beats me." (Case 1, 10)
- (3) "Everyone is equal. I do not depend on him for support. He has no right to beat me." (Case 9)
- (4) "My friend phoned me, saying that the new marriage law outlawed wife beating. Then I knew that he had no right to beat me." (Case 16)
- (5) "Now I know that he has no right to beat me. It is not because he is in bad mood. It is bodily harm." (Case 28)
- (6) "He has no right to beat me, because I have dignity as a human being." (Case 6)

The women in Cases 6, 8, 16, and 28 started to regard violence from a legal perspective. They finally realised that family violence was not a family matter but an infringement of their rights and a public wrong. The women in Cases 1, 9 and 10 realised that beating was the consequence of inequality. Men and women should be equal. These women gradually obtained a better understanding of their rights at home during the long process of seeking outside help.

7.4 The Impact of Marriage Law 2001

The Marriage Law 2001 is a symbol of recognition of women's rights within the home. It not only offers protection for women in a traditionally private sphere of life but also becomes a way of stimulating the change of attitude of abused women towards domestic violence. "Legal change may sometimes be a highly effective way of transforming ideology to create a sense of entitlement."¹²

"My neighbour told me, 'The new marriage law has taken effect. Your case will not be left unattended. You should go to WLSSC for help.' I used to think that it was perfectly justified for a man to beat his wife. Now I know there is a law there to protect women like me. I want to sort my problem out as soon as possible. Now I know if he beats me again, I will phone 110 and I can go to the women's federation too." (Case 8)

"I have just learnt that wife beating has been outlawed. I did not come to WLSSC before because I thought it was pointless to do so. Now that there is a written law out there, I have come to consult about divorce." (Case 18)

"I have been in the marriage for 18 years. I used to think that this was a family matter that nobody interfered in. Now I know that WLSSC can help me. I am full of hope. I phoned WLSSC and poured out my grievances." (Case 9)

The change of attitude of abused women to the issue is the core of eliminating domestic violence. The Marriage Law 2001 has helped to stimulate this change.

Some women have expressed their wakening sense of rights by reading relevant

articles.

"The anti-domestic violence articles in the Marriage Law are new. Newspapers and magazines report lots of such cases to illustrate

¹² Felstiner, *op. cit.*, n. 1, at p. 643.

the implementation of the law. These reports are very useful to me. Now I know how to protect myself by means of the law." (Case 1)

The change of attitude of abused women can have a positive impact on law enforcement organs. Some women push the police to implement the law. The woman in Case 10 has studied the Marriage Law carefully. When she went to the police station to get a letter to testify to her wound, she questioned the police for not taking actions against her husband. She said to me, "Next time he beats me, I will ask the police to detain him." As more and more women realise their rights, they will put pressure on law enforcement organs to implement the law.

The woman in Case 29 was critical about the judge who processed her divorce case. She said, "The court does not enforce the new Marriage Law. I told the judge how he beat me. The judge simply ignored my appeal. I came to WLSSC to ask whether the new Marriage Law is effective or not and whether the letter stamped by my work unit should be used as evidence of domestic violence." The woman challenged the judge for not implementing the law. Such challenges will give impetus to the implementation of the law.

On the other hand, some women expressed their dissatisfaction at the law and the lack of implementation of its regulations:

"The new Marriage Law has just been put into practice. My case is a typical one. I thought they would certainly help me out. I went to the district women's federation and got referred to the local women's federation. I went to the neighbourhood committee too. To my disappointment, they say things they normally say in official circles without solving my problem." (Case 16)

"I think the law is powerless. Why should I bear all this? I have a child and I have nowhere to go. I feel I have no choice." (Case 4)

"The law is not powerful enough to back up abused women. The social environment is not in favour of abused women. We are a weak group in the society. We have no alternatives but to bear it." (Case 2)

Conclusion

Data analysis in this chapter shows that domestic violence in China has a close link with family background. Women from violent family backgrounds are more likely to tolerate violence as they take the beating as normal, while men from a violent background are more likely to be violent to their wives. Two-thirds of women interviewed did not initially see the violence as a human rights issue. Women's natal families as well as in-law families also take the violence as a family matter rather than a human rights issue.

Women's attitude towards violence can be a decisive element for them in choosing whether they fight back or take the beating, their ways of coping, and their decision to seek outside help. Realising that it is their husbands' fault to beat them is the turning point for women to break the circle and seek outside help. Therefore changing the attitude of the whole society in general and women in particular is the first step to fight against violence.

Although women are active in seeking various solutions within the family to solve their problems, they do need outside help. In some cases, the Marriage Law 2001 has itself triggered a change of attitude among abused women, while others have continued to see the law as ineffective. It is the latter issue that will be addressed in the following chapter, which examines in more

detail women's experiences of the main social institutions – women's federations, neighbourhood committees, and the police – which should have a key role in effectively implementing the new law against domestic violence.

Chapter 8

Women's Experiences of Institutional Help

The previous chapter aimed to reveal how women's attitudes and their sense of rights relating to domestic violence have been mainly shaped by three controlling factors: the attitude toward violence in the women's own family backgrounds and in their husbands' families; Chinese cultural values surrounding the family; and the women's experiences in coping with the beatings which are necessarily related to the degree of support—or lack of it—which they receive from their own families and in-laws, or friends and neighbours. Furthermore, changes in the law, particularly the Marriage Law 2001, have begun to have an effect in shifting some women's attitudes toward domestic violence, from viewing it as a purely private family matter to developing a growing sense of it being a violation of their human rights.

This chapter seeks to examine women's experiences in seeking help from a number of agencies, which include women's federations, neighbourhood committees, work units, and perhaps most importantly, the police. The general role of these bodies in Chinese society was outlined in Chapter 5. These institutions represent the crucial link between developments at international and national levels in terms of the adoption of laws protecting women, and women's emerging sense of rights relating to domestic violence. If the institutions responsible for assisting women and for enforcing laws are unable to shake off

traditional values and cultural traditions about domestic violence, laws will prove ineffective in helping them to enforce their newly acquired legal rights.

8.1 The Services of Women's Federations

Women's federations at all levels provide several major services to abused women. These include: providing legal services and legal aid, issuing formal documentation for women to facilitate their access to legal medical certificates, acting as witness and mediator, and offering advice services.

8.1.1 Legal Services and Legal Aid

Seventeen of the 30 women surveyed sought the help of women's federations when they decided to file for divorce. Their main purpose was to access legal advice and legal aid in relation to divorce procedures, fostering children and division of property. The satisfactory level of the service largely depends on individual expectations.

"Beijing Women's Federation wrote down my case and recommended me to WLSSC. I got legal aid from WLSSC." (Case 23)

The woman in Case 23 was beaten so severely that she suffered from soft tissue contusion, cerebral concussion and rib fracture; the extent of the abuse is defined as light bodily harm according to the criminal law. With the help of the WLSSC, her husband was detained for 15 days and sentenced to 1 year in prison. He was also required to compensate financially for the medical fee of the woman. This was the first domestic violence case that went on public trial

in Beijing. According to the law, light bodily harm occurring within the family can be tried publicly; however those legal branches responsible for implementing this rule often conduct the trial in private. For the public trial, the police collect all the evidence. The neighbourhood committee acts as a witness. For a private trial, the plaintiff needs to collect evidence and get witnesses. A public trial benefits women because relevant law enforcement divisions can bring perpetrators to justice. In this case, the Beijing Women's Federation wrote two important letters, one to the police station calling for the perpetrator to be severely punished, the other to the WLSSC appealing for legal aid. The woman got legal aid and won the case.

8.1.2 Assistance in Obtaining a Legal Medical Certificate

A legal medical certificate is a necessary document if perpetrators are to be punished. In order to obtain a legal medical certificate, abused women need a letter from either women's federations or police stations to prove their husbands' violence. It is easier for women to get the letter from women's federations, as the police tend to avoid such a responsibility.

"In 1999, I started to go to the women's federation because I prepared to file for a divorce in the military court. As he is an army man, the local police station does not have the authority to write a letter for me to go to the legal medical expert. The security department in the army refused to write me such a letter for fear of slapping their own faces. I went to the local women's federation, hoping that they could contact the court. The person in charge phoned the court twice, appealing for the protection of women and children during the legal process. I also asked the Beijing Women's Federation to investigate the case and write a report based on facts from the legal perspective. The federation entrusted the local neighbourhood committee to investigate the case and wrote a

report. The federation stamped "proved to be true after investigation". (Case 14)

For a wife of a military man like this woman, the women's federation played an essential role in safeguarding her rights. The investigation report written by the neighbourhood committee and stamped by the women's federation is a convincing evidence in court. It is a strong support to the indictment. Chinese marriage law protects the marriage of military men. Without the backing of the women's federation, the woman had no power to fight for her own rights.

Article 26 of the 1980 Marriage Law stated that "If the spouse of a soldier in active service desires a divorce, the soldier's consent must be obtained." The woman in Case 14 was in the abusive relationship for 12 years. She eventually filed for divorce in 1992. As a PE teacher, she is an independent career woman, but she had no choice except to remain married, because her husband would not grant her a divorce. Due to the long-term physical and sexual abuse to which she was subjected, she now suffers from headaches and dizziness, hearing problems, numbed legs and arms, and bone damage. The military court tried the case. The man was sentenced to 6 months suspended imprisonment subject to supervision outside prison. The woman was still bound in the marriage at the time of my interview, although the man neither contributed money to the family nor came back home since 1996. The woman said,

"I always feel vexed, but never self-abased. I am financially independent and I have my own apartment. Why on earth should I bear his humiliation for so many years? I sought help, but could

not find access. The law that protects a marriage like mine is protecting crime."

The Marriage Law of 2001 makes amendment to this article. Article 33 states that "If the spouse of a soldier in active military service desires a divorce, the soldier's consent must be obtained, except when the soldier commits a serious fault." The explanation of the article lists four circumstances under which a divorce should be granted. (1) the military party is guilty of bigamy or cohabitation with a third party; (2) the military party commits domestic violence, abuse or abandons his family members; (3) the military party gambles or takes drugs; (4) any other circumstance causing alienation of mutual affection.¹ Thus according to the new law, the woman in Case 14 would have been entitled to a divorce. Other women facing a similar situation would be in a better situation than this woman.

8.1.3 Women's Federation Act as Witness and Mediator

The women's federation acts as witness and mediator. When a woman comes to them with a complaint, the normal practice for members of the women's federation is to listen to the complaint, contact the man or his work unit on the request of the woman, and mediate between the couple or ask his work unit to mediate between them.

"I contacted the women's federation representative in my factory. I wanted them to see my wound, so that they could act as witnesses. The second time I went to the women's department in my work unit was when he took our daughter by force. I told the staff there

¹ Huang, S. Y. (2002) *Application & Explanation of Marriage Law*, Beijing: China Judicial Publishing House, pp. 81-85.

that I wished to get the child back. The staff negotiated with him successfully. He agreed to return the child to me temporarily. Soon afterwards however, he snatched the child away, so I went to the department again. The staff helped me to ask him about the child. I knew where to find my daughter." (Case 2)

In Case 2, the woman filed for divorce. Her case was rejected the first time. She had to wait for 6 months to file for divorce again according to the Marriage Law. During this period of time, her child was snatched away from her by force. She had to collect new evidence to show that there was no possibility to resume the relationship in order to get a divorce.

8.1.4 Advice Service

The women's federation gives direction to women as to where they should go for specific help and what they should do.

"I contacted the local women's federation. I wished to get a letter from the federation in order to have a legal medical certificate. The women's federation phoned the police station, asking them to help me. I was able to obtain the letter easily from the police station. I phoned the women's federation to consult them on how to solve my problem. They answered specific questions" (Case 10)

From my observation at the WLSSC, I noticed that cases referred to the WLSSC by the women's federations received more attention. These cases are treated quickly, and legal aid is more likely to be granted.

8.1.5 Attitude of the Staff of Women's Federations

The service quality of women's federations varies from place to place. Some provide better service while others provide no practical service at all, except for

telling abused women "we can do nothing about it." There are no guidelines for this organization to intervene in domestic violence cases. My fieldwork data presents a diversified and contradictory picture.

"Women's federation is the natal family of women, a place for women to appeal for redress of a wrong. I was burnt and became handicapped and lost the ability to work. The local police station rewrote my notes. His family had bribed those people. So I went to the local women's federation. They gave me money and found my daughter a boarding school and remitted the fee. They also contacted the court and the police on my behalf. The women's federation allocated us a room for living in. Their help encouraged me to carry on with my life. With the pressure of the women's federation, he was sentenced to 15 years in prison, and was required to pay three hundred and ten thousand Yuan (310,000 Yuan) in compensation." (Case 19)

Serious cases like this one will attract more attention from the women's federation. This case was widely reported in China as a typical case of infringement on women's rights. This district women's federation is a model in the Beijing area in preventing domestic violence. It was chosen as the base for launching an anti-domestic violence pilot project.

Not all women are as lucky as this woman. The woman in Case 21 told me her experience of being kicked from one organization to another like a football. The indifferent attitude of helping agencies reduces women's confidence in seeking help and gives women the feeling that they do not have the right to ask for help.²

"The evening newspaper says, 'if you are in trouble, go to women's federation.' That is the place for women to reason with people. I went to the local women's federation, hoping that they could persuade my husband to give up his mistress and come back home. I was required to fill in a form first, then she said, 'We can do

² Homer, M. (1984) *Private Violence: Public Shame*, Cleveland: Cleveland Refuge and Aid for Women and Children, p. 38.

nothing about it. You can go to the women's federation in the neighbourhood where he is registered.' She adopted an indifferent attitude. I went to the women's federation she told me. I was required to fill in a form and got the same reply, 'you'd better go to your neighbourhood committee'. I feel as if I was a football being kicked from one place to another. All my effort is wasted." (Case 21)

Some women never think of going to a women's federation due to presumptions in their minds.

(1) The women's federations is not responsible for beatings between couples.

"I have never thought of going there. I know the women's federation is responsible for the protection of women and children. I think it only interferes in beatings that happen between strangers. The women's federation would not interfere in beatings between couples." (Case 8)

"I always think it is a family matter, they would not interfere. Even if I go there, they would persuade me to stay in the marriage, like what the workers' committee did to me." (Case 9)

These women have the wrong idea about the women's federations only intervening in cases of beatings between strangers. This reflects the deep-rooted ideology in the society that violence happening in the public and private domain are seen differently and treated differently.

(2) The women's federation cannot solve practical problems.

"I always think that the women's federation cannot solve practical problems. Can it find a place for me to stay? No. Is it in its authority to judge us to get a divorce? No. I think of going to the women's federation, I do not know where it is; meanwhile I do not think it can solve my problem." (Case 3)

The woman in Case 3 found her husband having extra-marital affairs. She wanted to divorce him, however the apartment she was sharing with her husband and his family belonged to her in-laws. Therefore, even if she did get a

divorce, she would have no right to get a share of the apartment. She could only walk away. Her natal family was unable to provide her with a room. She knew that the women's federation could not allocate her a room, so she never contacted them.

(3) The women's federation is only for powerless women.

"No, I did not go to the women's federation, because I think I can solve my problem. I was not that pitiful to seek help from the women's federation." (Case 24)

This woman in Case 24 is a career woman. She approached her former husband's work unit and the police for help when he beat her. She filed for divorce in the end. Her attitude towards the women's federation is typical of quite a number of women. Some women take the view that women's federations are for women who have neither salary nor social status.

(4) Women's federation means nothing to some women.

"I have never thought of going to the women's federation. I am a temporary cleaner. I do not have one day off. I do not know where the women's federation is." (Case 5)

This woman never thought of seeking help from the women's federation, because the organization has little meaning for her as a place for women to get help. This shows that information about women's federations needs to be advertised and made more accessible to women so that they know where to get help.

8.2 The Police and Domestic Violence

8.2.1 Why Women Do Not Contact the Police?

Thirteen women among the 30 sampled never contacted the police. The phenomenon of underreporting domestic violence is universal, and China is no exception. This means that a very large majority of such case remains unknown. Research by Elizabeth A. Stanko in Britain demonstrated that only "two out of every one hundred attacks experienced by women were ever reported to the police and were thus not even given an opportunity to be recorded and processed through the justice system and eventually become an 'official' statistic."³ Dobash & Dobash's research in the late seventies showed that "98% of attacks were never reported to the police and thus could not become an official statistic." The 1992 research figures have shown some improvement in reporting such cases: "While one in ten of the women in the survey had experienced an attack from her partner in the past year, only 22% of these had contacted the police at some time for help. Women had only reported 28% of the assaults they experienced."⁴ The U.S. national crime survey of domestic violence cases from 1978 to 1982 found that 48% were not reported to the police because it was viewed as a private matter or because of fear of reprisal.⁵ As this research is qualitative, it is impossible to give statistics on under-reporting. However, the research still demonstrates why women often do

³ Stanko, E. A. (1994) *Perspectives on Violence*, Quartet Books, p. 14.

⁴ Hague, G. & Malos, E. (1993) *Domestic Violence, Action for Change*, Cheltenham: New Clarion Press, pp. 55-56.

⁵ Dobash, R. E. & Dobash, R. P. (1992) *Women, Violence and Social Change*, London: Routledge, p. 4.

not report violence. There are several major reasons for the under-reporting in the Chinese context.

(1) The police would not intervene in family matters.

Domestic violence is widely viewed as a private family matter. The idea that the police would not intervene in family matters is the major reason for woman not to contact the police. This attitude is widely accepted in society. It not only keeps abused women from seeking help from the police but also gives the police enough excuse for not intervening in domestic violence.

"The police station is just in front of our apartment, but I have never thought of going to them. I always think that it is no use to go to the police for domestic conflicts." (Case 5)

Another woman's experience shows a clear negligence of duty on the police's part.

"At eleven O'clock on the evening of July 2nd, 2000, he came back home with a knife in his hand. I shouted for help. My neighbours came to rescue me. I went to the local police station. The police on duty said to me in a very indifferent way, 'He did not kill you, did he? You go back home. If he beats you again, dial 110 (the police emergency line).' " (Case 30)

The former husband of the woman threatened her with a knife late in the evening. According to Regulations of the People's Republic of China on Administrative Penalties for Public Security article 22, the man should have been "detained for a maximum of fifteen days, fined a maximum of two hundred Yuan or given a warning", depending on the seriousness of his

behaviour.⁶ Instead of at least cautioning him, the police simply sent the abused wife back home to him. This was the second time this woman had approached the police. The first time she went to them, their attitude had been no better.

"In 1995, we had not got divorced yet. He took his mistress back home. We fought with each other. He beat me severely. I reported the incident to the police. The police said to me, 'He has a mistress. Ok, you go back home. We will arrest him in a minute.' They never turned up." (Case 30)

The indifferent, even light-hearted attitude of the police towards domestic violence prevented this woman from seeking help from them again, because such an endeavour not only proves to be "useless" but also brings about humiliation and victimization to abused women.

(2) Fear of consequences of police intervention

"I think the police do not intervene when the couple is fighting. I am also afraid the police would arrest him. We two need to lead our life together after the fighting." (Case 8)

This woman has been in the abusive relationship for 36 years. Her husband drinks twice a day. Whenever he gets drunk, he curses and beats her. She has suffered a broken arm and bad hearing. "If he does not curse me for two days, our neighbours would say the sun rises from the west."

(3) Husband is in the police.

I have never contacted the police. He is the police in charge of the area we live. If he knows that I accuse him, he will surely take revenge on me. (Case 26)

⁶Article 22 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security states "Whoever commits one of the following acts infringing upon a citizen's rights of the person, but not serious enough for criminal punishment, shall be detained for a maximum of fifteen days, fined a maximum of two hundred Yuan or given a warning; (5) threatening others' safety or disturbing others' normal lives by writing letters of intimidation or by other methods."

This 30 year old woman suffers from psychological problems due to 11 years of abuse. As the wife of a policeman, she knows the police culture very well, therefore she would not even try to go to the police. My interview in a district police station shows that violence in police families can be more severe than violence in ordinary families. A police officer in this district station punched his wife to paralysis. He is still taking care of his paralytic wife without being punished.⁷ The wife did not institute proceedings against her husband, so this serious bodily harm case remains unattended after many years. According to relevant laws, family violence cases are categorized as private prosecution cases. Only when victims appeal for prosecution can relevant branches work towards achieving justice.

(4) Lack of knowledge about contacting the police.

"I have never thought of contacting the police. I do not know I should phone 110 (the police line). I always think that when the police come, the beating is over. The police can do nothing about it." (Case 3)

Once the husband in this case chased her with a chopping knife and cornered her in a dead end lane. A couple living at the end of the lane stopped him. Even facing such a dangerous situation, she still thought that this was a fight to be resolved within the couple. She never thought of going to the police. With the implementation of the Marriage Law 2001, more and more women may report domestic violence to the police, as articles 43 and 45 state that it is the responsibility of the police to intervene in such incidents.

⁷ The interview was conducted on June 3, 2001 in Xuanwu district police station in Beijing. This police station is in charge of 540,000 residents within 16.53 square kilometres of land. Southwest part of the Tian An Men Square belongs to this police station.

(5) The situation is not considered serious enough to call the police.

When women think the situation is still under their control and that they are not facing any imminent danger, they often do not phone the police.

"After I decided to divorce him, I went back to get my stuff. He threw things at me. It did not hit me. I phoned my father to come. I thought if he dared to beat me again, I would phone the police. He did not." (Case 13)

8.2.2 Women's Experiences of Contacting the Police

Women phone the police in the hope that the latter can achieve what the women themselves could not bring about. Some women hope that the police can explain to the man that what he has done is wrong. Some women appeal for the detention of their husbands, whereas others complain about the chauvinistic and male-oriented attitude of the police, an attitude that they feel victimises the woman and affects the police's evaluation system. Under this system, the work of each police station is evaluated by the detection rate it has achieved. Police stations with low detection rates must assess their performance through self-criticism. The police believe that dealing with domestic violence cases is troublesome and can lead to an increase in their non-detection rate, and they are not criticized for failing to intervene in such cases.

The following cases illustrate the types of help abused women seek from the police and how often they fail to receive it:

(1) What I want is to denounce my abusive husband.

"After I saw the doctor late in the evening, I went to the police station with my son. I said to the police, 'My husband hurts me. I wish you would stop him.' The police phoned my husband and asked him to take us back home. The police said, 'Men comrades should show consideration for women comrades. Men comrades should be broad-minded. Beating your wife does not demonstrate your power. Take her back home.' The police did not tell him that what he had done was wrong. The police did not help me. Immediately after we went back home together, he shouted at me, 'Don't you want respect? Do not come back. Get out!' " (Case 10)

This woman went back to the police station to get a letter to testify to her wound at the end of May 2001. She asked the director of the police station why her husband had not been punished in accordance with the new Marriage Law that was passed on April 28, 2001. The answer was that "we've just read it, but detailed explanation is not available yet. Our principle is to maintain the marriage." In this case, in the name of maintaining the marriage, the abusive man was neither denounced nor punished in accordance with laws.

(2) Why is it so difficult to detain him?

"He broke my arm. I wanted the police to detain him. The police said to me, 'you go to the hospital first.' I insisted that the police should take him to the police station. The director of the police station said, 'we detain him today, you will beg us to set him free tomorrow. It is your family matter. Fighting is more severe in our police families.' His (the husband's) family knows the local police, so the police just wanted to ease the situation." (Case 12)

In this case, the director of the police station took the beating for granted, reasoning that his colleagues beat their wives more severely. The husband in Case 12 should have been detained for up to 15 days in accordance with the Regulations of the People's Republic of China on Administrative Penalties for Public Security.

(3) The police listen to him rather than me.

Many abused women complain that the police tend to listen to the man instead of the woman when they come to the site of the conflict. Women feel hurt when the police show suspicion of their statement. The woman in Case 15 described her experiences with the police.

"He forced me to share the cost of buying our apartment. I was afraid of triggering him, so I stayed in my office. He came to my office after work, beating me and cursing me. My eyes and ears were bleeding. The beating caused me urinary incontinence. I phoned the police. The police did not denounce him for what he had done. He simply said to both of us, 'Do not disturb the public order. If you fight with each other, go back home.'

The second time I phoned the police, he had broken my nose. The police did not say anything to him, but took us to the police station. The police talked with him first and let him go. I was waiting for a long time until I went to ask. The police talked with me and kept a record. The police said to me, 'He does not love you anymore. It is up to you what you can do next.' The police believed him rather than me.

Another time he ordered me to empty the bin, I was a bit slow. He pushed me and kicked me. He told the police, 'she never cleans the house.' I said, 'It is not the case. He beats me.' The police listened to him and left."

(4) I am blamed for reporting my husband's adultery.

Women can be victimised again by the blaming attitude of the police. The woman in Case 7 reported her problem to the police, who not only refused to intervene but also blamed her for reporting "such a shameful thing".

"Five o'clock on an early morning, I came back from my hometown and discovered that he was in our house with his mistress. I went to the police station directly with my marriage certificate. I told the police that my husband beat me because he had a mistress. The police did not want to interfere. They said to me, 'How can you come to the police for such a shameful thing?' So I had to stay at my neighbour's house. The same day, he found

me at my neighbour's house and beat me for 20 minutes. He also beat my friend who came to rescue me."

Zoomer has observed that "the basic reason for the police's unwillingness to actively intervene in these cases should be sought in the belief that violent 'conflicts' are a more or less natural outgrowth of marital relations and that they are therefore acceptable to a certain extent."⁸ In the Chinese context, the situation is similar. The term "domestic violence" comes from the West. Chinese people use "fighting between a couple" to refer to the same issue. The term covers the core element of the power imbalance in the hierarchical structure of the family, where women are the majority of the victims. There is an old saying in Chinese culture, which goes "rather demolish 1000 temples than break a marriage". It is considered immoral to break a marriage. This partly explains the reason why the police often discourage further actions other than ending the immediate crisis.

As long as abused women are still in a marriage, the police will often find excuses to deny them access to evidence for further action (filing for a divorce or subjecting perpetrators to criminal justice). These include refusing to write a letter for women to get legal medical certificates or to act as witnesses of the beating. The general practice of the police reflects the fact that they do not take wife beating as a human rights issue, which shows an indifferent attitude of law enforcement officers to violence occurring in the private domain.

The woman in Case 1 wanted to get a letter from the police in order to

⁸ Zoomer, O.J. "Policing Women Beating in the Netherlands" in Hanmer, J., Radford, J. & Stanko, E.A. (1989) *Women, Policing and Male Violence*, London: Routledge, p. 135.

have a legal medical certificate. It is a very important evidence for her to divorce her abusive husband. She called the police when the husband beat her with a steel stick.

"Several days later, I went to the police station. I asked the police to write a certificate for me, stating that my husband beat me with a steel stick. The police were not willing to do so. They said, 'there are more serious cases. To get a legal medical certificate, you need to pay 400 Yuan. Your wound is nothing. Even if you get the certificate, he cannot be punished. Why do you want to bother?' I said, 'I do not mind how much money I need to pay. I want to get a legal medical certificate.' The police said if the court wanted them to write a letter, they could. (Case 1)

The woman filed for divorce three times, but was rejected due to, in the words of the court, a "lacking of evidence that the relationship is broken down."

8.2.3 "We Can Do Nothing about Your Family Matter"

The most frequently used sentence by the police is "we can do nothing about your family matter." It is also the most rejected sentence by abused women.

They express disappointment, frustration and helplessness when they talk about such an attitude of the police.

"In April 1997, after we got a divorce, we remained living in one apartment. He led prostitutes to his room. The woman said to my daughter, 'it is no use to study well. If you work like me, you will lead a leisure life. No worries, but enjoy life.' I was very angry to hear this. I asked my former husband to forbid any prostitutes to enter the house. My husband said, 'it is none of your business.' We quarrelled. He chased me with a knife in his hand and cut me twice in my shoulder. I reported the incident to the local police station. He was detained for 7 days. When I went to the police station, one police said to me, 'it is not our duty to interfere in family matters.' Another police said to me, 'we will not interfere in your family matter next time.' I did not say anything at that moment, however I was very disappointed to hear it, because I had already got a divorce, they still said it was a family matter. I was hurt. Simply because he used to be my husband, he is punished lightly. It is unfair to me. I count on the government to sort my problem out.

The low quality of policemen like them destroys the image of the whole police force." (Case 20)

The criticism that the police are not willing to do anything is closely related to the fact that the police seldom take legal action, even in serious cases or cases that last over a long period of time. The clear distinction between a public and a private matter lies at the root of the non-intervention attitude of the police.

"I suffered from hematuria for more than 20 days because of his beating. I lost the courage to live, so I hung myself. My neighbour phoned the police. The police told me, 'if somebody else beat you like this, we will detain him. We can do nothing as he is your husband.' "(Case 27)

8.2.4 Two Positive Examples of Police Practice

Two women in my sample expressed their appreciation of the help that the police provided them. Firstly, the police responded quickly. Secondly, the police pointed out clearly that wife beating is an infringement of the human rights of the wife and it should be stopped. Thirdly, the police showed understanding and offered support to litigants and provided advice to them.

"On an early morning in January 2001, he suddenly kicked the door open after months of disappearance. The door hit my eye black and blue. I knew that he had come back to make trouble. I phoned the police. The police came within minutes. The police said to him, 'hitting her is bodily harm. You are not allowed to do so.' He knew that the local police had no authority in disciplining an army man, so he argued with the police. The police took him to the police station and telephoned his army. His army sent somebody to take him. Immediately after he was transferred from the police to the army men, he was set free. Then he came back home to harass me. I phoned the police five times a day. The police said to me, 'if he hadn't been an army man, we would surely

have detained him.' The police kept a record of this. I think the police are very supportive. They helped me." (Case 14)

One case in my sample shows that effective intervention can stop the violence at an early stage. The man was detained for 14 hours the first time he beat his wife. When he was set free, he said to the wife, "I will never beat you again." Since then, he dares not beat his wife and children, although he throws things when he gets angry.

"I wanted to make a phone call using his mobile phone. He did not agree. I got hold of his mobile and made the phone call. He got crazy. He hit my head with a thick wood stick with nails on it. Blood came out of my head immediately. His parents stayed in another room. They heard me crying, but neither of them came to stop their son. I phoned the police. The police came within two minutes. I was lying on the floor when they came. They questioned us separately. The police said to him, 'how dare you hit her so hard simply because of a minor thing? What would you do if you beat her to death? You cannot beat women and children. Follow me to the police station.' The police also criticized his parents, 'how can you see your son beating his wife like this?' The police recorded the whole incident. He was in custody for 14 hours. The police advised me to go to my mother's house for several days. They accompanied me to the house and got some clothes. The police said to me, 'he beats you like this, you'd better get a divorce.' I said, 'I do not agree to get a divorce because of my son.'

Half a year later, he wanted my son to go with him. My son did not want to. He got angry. He hit my son with his shoes. I tried to protect my son. The shoes hit my arm. I went to the police station again. The police phoned him and asked him to go to the police station. He refused to do so. The police came to my apartment and talked with him. The police said, 'you cannot beat your wife and your son whether you choose to get a divorce or not. They are protected by law.' In my husband's presence, the director gave me his telephone number, saying 'if he dares to beat you again, phone me. I will punish him according to the law.'

The third time he got very cross, because my son did not clean up after he finished homework. He threw a table from one room to another. My son was so frightened that his face turned pale. I went to the police station again. I said, 'I do not know when he may kill

us with a knife. He can do this at any time.' The police said, 'we can do nothing to him if he throws a table. We suggest that you go to the local women's federation and see how they can help.' "

In this case, the police taught the perpetrator a useful lesson by telling him that he could pay a price for beating his wife and child. The second time, the police denounced his behaviour; meanwhile they imposed a form of control over him by giving the police telephone number to the wife and promising help at any time. The third time the police provided advice to the woman.

8.2.5 Changes Underway

My data also shows some improvements in police responses although the changes are slow. Women are aware of changes of practice in the police. One woman said to me in the interview that she had phoned the police once and explained to them her dilemma, the police told her on the phone that, "It is your family affair. We do not interfere." She added, "That was in 1989. Nowadays, things might be different."

The Program for the Development of Chinese Women (1995-2000) has articles to protect women's equal rights in the family in accordance with the law and resolutely curb family violence. Article 10 demands a better enforcement of laws and decrees in defence of women's rights and interests, and severe punishment for those who break relevant laws and infringe upon women's rights. It also requires the strengthening of supervision of law enforcement officials. The implementation of the program has an impact on the practice of the police. By comparing the experience of the woman in Case 30 with the

police in 1995 and 2000, we can see the change. The first time she approached the police, the police sent her away by teasing her. The second time she approached the police, although the attitude of the police was no better than the first time, they actually provided useful information by telling the woman to dial 110 in an emergency. The two successful interventions that happened in 2000 and 2001 respectively also indicate the improvement of police work. The following chart shows for the relevant cases, the duration of abuse, and the date when the women concerned reported the matter to the police. All cases except one were reported to the police after the 1995 Fourth World Conference on Women. This indicates that women's sense of rights was heightened after the conference. Women are more likely to report the violence to the police as they are becoming less and less tolerant of domestic violence.

Table 8.1 Duration of Abuse and Year of Reporting to the Police

Case number	Duration of abuse	Year of reporting to the police
Case 4	2 years	Nov. 2000
Case 30	11 years	1995 and 2000
Case 25	13 years	1989
Case 2	2 years	1998
Case 1	14.5 years	1999
Case 7	1 years	2001
Case 15	6 years	2000
Case 19	9.5 years	1998
Case 14	12 years	2001
Case 20	11 years	1997
Case 12	5 years	1997
Case 22	3 years	1999
Case 28	4 years	1999

The new Marriage Law includes anti-domestic violence articles. It should have a certain impact on the attitude of the police force; for example, under its terms, they cannot stay away from domestic violence by claiming that it is a family matter. By the end of my fieldwork, I noticed some changes in the practice of the police in an interview with one woman in my samples on the 19th of August 2001, four months after the new Marriage Law came into effect:

"The local police came to visit me very recently. He wanted to enter my case in the records in case my husband would hurt me more. During the spring festival of 2001, I went to this police station after he grabbed my hair and beat me. I showed the police my damaged hair. They told me, 'we can do nothing about it. You should go to the court.' Now my landlord has reported my case to the police. The police came to me quickly." (Case 7)

8.3 Intervention of the Neighbourhood Committee

As already discussed in Chapter 5, neighbourhood committees have limited power in dealing with domestic violence, because their responsibility is to mediate between disputing couples over minor conflicts. They do not have the power to intervene in cases of serious violence. Due to this limitation, litigants prefer to go to women's federation, work units of both sides, or to the police rather than to the neighbourhood committees. Seven among 30 women in my sample mentioned going to neighbourhood committees for help. It turns out that the effect of the latter is quite limited:

"I have never been to the neighbourhood committee because of his beating. When my daughter-in-law called me names in 1988, staff members in the neighbourhood committee came to mediate. My daughter-in-law shouted at them. It had no effect." (Case 8)

Women who have contacted neighbourhood committees complained about the inadequacy of their help:

"When my husband beat me with a steel stick that evening, a staff member in the neighbourhood committee came to ask what had happened. My husband often chats with him. My husband said, 'It's between us. Leave it to us.' The man left soon. After the beating, I went to the neighbourhood committee. The man said to me, 'it is between you and your husband. How can we interfere?' I said, 'My life is threatened. How can you still say it is a family matter?' He smiled at me without providing any help. I strongly uphold anti-domestic violence articles in the new Marriage Law. If the neighbourhood committee intervened last time, my husband would not have hurt me so badly. Now they dare not say 'how can we interfere' to me." (Case 1)

"I went to the local neighbourhood committee where we live and to the one in the area where he works. What they wanted me to do was to fill in forms. No feedback. It is no use." (Case 21)

The neighbourhood committee can only mediate on the condition that both parties agree to listen. If one party refuses to come, the neighbourhood committee can do nothing.

The limited power of the neighbourhood committee over domestic violence lies in its ability to stop the beating at the scene provided that perpetrators submit to its authority. Based on my interview with the Huajiadi neighbourhood committee that I have transcribed later in this chapter, there are reasons to believe that this form of intervention can be effective in stopping immediate violence. The neighbourhood committee can also help to find out the causes of the beating between a couple so as to resolve conflicts at an initial stage. In addition to this, if mediation is not working, the neighbourhood committee can provide advice as to where abused women can go for further help. The proper role the neighbourhood committee can play is as mediator and

negotiator at the initial stage of a conflict, such as early intervention in minor family violence cases. Such work can also serve to monitor the frequency and seriousness of violence in a family. When abused women require witnesses and written reports, the neighbourhood committee could provide back up help.

Some neighbourhood committees have already provided such services, although this is not common practice. In Case 14, the neighbourhood committee investigated the case and wrote a report for the woman, which served as powerful evidence in court. In Case 20, the local neighbourhood committee wrote a letter to prove that the plaintiff could not afford the litigation fee due to unemployment and the fact that she had been subjected to long-term abuse, and as a result the WLSSC decided to provide legal aid to her.

8.4 The Function of Work Units

In Chapter 5, I explained the relationship between work units and women. The function of work units is to mediate between conflicting couples and act as support for abused women. The general attitude towards domestic violence is that it is a family matter, therefore the perspective of work units is to mediate between the couple in order to keep the family together, rather than protect women's rights. Only when abused women are determined to get a divorce and require specific help can work units provide support for them. In the following analysis, I shall demonstrate the ways in which abused women can get help from work units.

Women go to work units for help when they decide to get a divorce, because this will make the family conflict public. One third of the women in my sample had the experience of seeking help from their work units.

(1) Mediation

As with neighbourhood committees, work units mediate between the couple for the purpose of keeping the family together rather than protecting women's rights. They attempt to ease the conflict between the couple for a short period of time, with the consequence that abused women are often persuaded to remain in the relationship.

"We work in the same unit. I went to our work unit for a certificate letter in order to get a divorce. The manager said, 'we only mediate. We cannot write you such a letter.' I had to drop the idea of getting a divorce. My husband has a very good relationship with our manager." (Case 9)

The woman in this case wanted to get out of the abusive relationship many times, but due to lack of back-up both in her natal family and the work unit, she remained in the relationship for 18 years.

"The representative member in charge of looking after women's work in my work unit persuaded me to stay with him, saying that if there was no evidence that he had a mistress, then it would better to make do with it. She criticized my former husband, but to no effect." (Case 2)

(2) Criticising Perpetrators

When women ask work units for help, work units are involved by criticizing the perpetrators. Short-term effects can be achieved, because work units put pressure on perpetrators to behave themselves. When work units of women

contact work units of men, it becomes a more serious matter. The intervention is normally effective.

"I told his boss that he beats me because I gave birth to a girl. His boss said to him, 'It makes no difference to have a boy or a girl.' When he beat me at my work place, my boss criticized him, saying 'why do you beat people in the work place? It is the same to have a boy and a girl.' He is afraid of my boss. My boss went to his boss. His boss read him a lecture." (Case 5)

(3) Support for Women

Work units serve as back-up for women when they need letters to prove the violence.

"When I decided to get a divorce, I talked with my boss. People in charge in my work unit said to me, 'what help do you need? We can accompany you to the women's federation and your husband's work unit.' My work unit wrote a letter for me to prove that he beat me." (Case 29)

The intervention of the work unit has certain effects. The couple in Case 17 remained on good terms for 2 years due to the successful mediation of the work unit. However, as the control of work units on staff has become weakened due to the transition to a market economy, such intervention may become less effective. Meanwhile, although the Marriage Law 2001 now gives them responsibility for domestic violence, there are no detailed guidelines on how they should fulfil this responsibility.

8.5 Interviewing Relevant Institutions

To understand the work of relevant institutions related to abused women, I interviewed a neighbourhood committee, one women's federation, and a police station. The data may help us to understand the mechanism in dealing with domestic violence cases from a perspective other than that of abused women.

8.5.1 A Neighbourhood Committee

I visited one neighbourhood committee and obtained interesting information.⁹ Huajiadi Neighbourhood Committee in Beijing encompasses 1926 families and 5778 residents. Residents consist of staff from a newspaper, two universities, one academy of science, clerks from government organs, factory workers and peasants. It has 6 staff. When there are conflicts to solve, the following people will be involved: a member from the relevant area (eg. a member from women's work when it is related to family-planning), a member of staff responsible for the block, and the block warden.

The director of Huajiadi Neighbourhood Committee has been working in the area for 8 years. She is also the mediator in this neighbourhood committee. She has mediated 3 domestic violence cases so far. The following is one example:

The cause of the conflict was the bad relationship between the wife and the mother-in-law. Another reason for the conflict was that the wife suspected the husband of having an affair with another woman. The woman came to the neighbourhood committee, complaining about constant quarrelling and infrequent beating. The director talked with the husband. The husband said, "She suspects that I have a girlfriend. Two days ago, one of my female colleagues, together with a driver from my work unit, came to my house. My boss arranged for my female colleague and I to work together for a day. She

⁹ This interview was conducted from March 15 to March 22, 2002 in Huajiadi Neighbourhood Committee, Beijing.

was extremely angry at this. She ran down to the car and accused my colleague of being the third party. I failed to finish my work that day, meanwhile my colleague was disgraced." The director persuaded him not to beat her again. The man said, " She is a lunatic. Everyone in my work unit knows that I beat her. For the sake of your patience, I will stop beating her."

The second time the woman came to the director was because her husband locked her out. The director followed her to her house and talked with the husband on her behalf, so finally the husband opened the door. The director mediated again so that the woman could stay in the house. The director said to her, "Three pieces of advice to you. One is that you do more housework so as to make your home a lovely place for your husband. Another is that you should find a job. As a woman of over thirty, if you study all the time that will decrease your chances of finding a good job. If the above advice does not help your relationship, I suggest you file for a divorce in court." The director said, "We can only mediate. If mediation does not help, we can do nothing. They still fight with each other. The woman stopped approaching me after two incidents."

I asked the director under what circumstances she and her colleagues would call the police. She said, "If the couple still fight in front of me, I will call the police. This has never happened to me." One policeman in charge of this area sometimes comes to the neighbourhood committee. The director chats with him about such cases. He listens and says, "We can do nothing about it." The neighbourhood committee only contacts the police when serious criminal cases happen.

From this interview, we can see that the power of the neighbourhood committee in dealing with domestic violence is mainly limited to mediating between spouses in minor conflicts and over a limited period of time. It does not have the power to intervene in domestic violence cases that might easily escalate. It has strong potential to cooperate closely with the police, because the two have a daily working relation. However, the actual practice is that the police tend to avoid being involved in such matters.¹⁰ Women's federations and neighbourhood committees have not established co-operative working relationship on issues like domestic violence.

8.5.2 The Attitude of the Police

The interviews with three policemen in two suburban and one urban police stations supported my finding that the police's attitude towards domestic violence needs to be changed urgently for the law to be effective in protecting abused women. A police man in a southern suburb of Beijing¹¹ said,

"Domestic violence cases are outside of our duties. It should be the responsibility of mediators in the neighbourhood committee. Mediation is the major measure to solve family problems. Even if we go to the site, the only thing we can do is to mediate. We are short of police, therefore imposing such responsibility on us is a waste of police power."

"You'd better not think that the new Marriage Law imposes more duty on us. It makes no difference to our daily work, because before the law was drafted, we intervened in family violence cases if people dialled 110."

"We are not willing to solve such disputes, because it is hard to tell right from wrong in family matters. They are couples. After

¹⁰ This was the case at least at the time of my fieldwork in March, 2002.

¹¹ The interview took place in March 2001 in Beijing. The policeman is the director of a rural police station in Beijing.

fighting, they are on good terms again. Both of them blame us if we interfere. It takes a lot of time to mediate, however at the end of the day, we do a hard but unappreciated job."

"When a couple fight with each other, unless this results in light bodily harm, we would not keep records. People normally show due respect for us by stopping to fight when we arrive. Some people think that when the police come, all the neighbours will know. They do not want it to be spread, so they stop. When we see them stop fighting, we leave. During 20 years of my police career, only one husband broke his wife's bone. As he took her to hospital and she had no intention to have a divorce, I did nothing except criticise the man."

"It is hard to earn merits by solving family conflicts, meanwhile it is very time consuming. Unless it develops into group fighting between the family clans of the couple, it is considered as a minor daily job that adds no credit to our work. Every police station has a detection rate. If we cannot meet it, we will be labelled as backward. The majority of domestic violence cases is not up to the standard for setting up a criminal file."

"On many occasions, it is women who cause the beating because they are garrulous and bossy. Quite often instead of the man beating the woman, they fight with each other. We normally criticize men for beating. When we come across unreasonable women, we criticize them too."

This policeman does not want to intervene in domestic violence cases because such work would not bring credit for his work. He thinks that mediating between a couple is not part of police work. He also takes the view that women often provoke the beating. He is not the only policeman who takes such a view.

I interviewed a policeman in a northern suburb of Beijing in April 2001. He takes fighting between couples for granted. He said,

"It is a common practice for couples to fight with each other in the countryside. Men are breadwinners of families. Women can only work as supplementary labourers. Houses belong to men. If a woman does not want to stand the beating, she has nowhere to

stay. If a woman phones us for help, we must go. But it is nothing extraordinary."

A policeman in an urban police station said to me,

"Family disputes belong to the neighbourhood committee and mediation committees, because mediation is the way to solve the problem. Our responsibility is to deal with light bodily harm cases or more serious cases."¹²

It is commonly known that police culture is a male culture. My interviews with abused women show that more policemen hold the same view on domestic violence. The attitude of the police has negative effects on how they treat abused women and how they deal with domestic violence.

8.5.3 The Attitude of the Women's Federation

The women's rights department at the women's federation is in charge of dealing with cases of infringement of women's rights. I interviewed one member of staff at the women's federation in an urban area in Beijing. She said,

"The majority of women come to us with the purpose of putting pressure on their husbands. If they really want a divorce, they will go to court directly. So our duty is to mediate between the couple so as to end the violence. When women phone us or come to us complaining about being beaten by their husbands, I normally refer them to the appointed hospital to test their injuries. A detailed medical record will help them if they need to go to court. I also ask them what it is that they want us to do. There are two alternatives, either to stay with the husband or to get a divorce. For the former, we contact the husband by phone and ask him to come to our federation. Subsequently, I talk with both members of the couple to find out what caused the conflict and try to convince the husband to stop the beating. For the latter, I tell them what to do and where to go in order to get a divorce."

"I normally contact work units of perpetrators once or twice, because more than twice would make the bosses feel annoyed. There would not be any effect. Many of the perpetrators are good employees at their work units; therefore their bosses would talk to

¹² The interview was conducted on March 6, 2001.

them once or twice. If the conflict still goes on, their bosses will not want to bother. "

It is very rare for women's federations to contact the police in order to deal with domestic violence together. The common practice is that the organisations women approach deal with it directly. When abused women come to a women's federation at district level, the women's rights department will contact the women's federation in the sub-district office. The Women's federation in the sub-district office may contact the neighbourhood committee, telling them to pay attention to the abusive family.

From what I have collected, the major role the women's federation plays is that of information provider and mediator. Compared with the neighbourhood committee, it has less of a relationship with the police, therefore it might be more difficult for the two separate organizations to cooperate in dealing with domestic violence cases.

8.6 Pioneering Project Put in New Practice

The Domestic Violence in China: Research, Intervention and Prevention Project selected Feng Tai district women's federation in Beijing as a pioneering project site. Madame Jing, who is in charge of women's rights department from this district women's federation, told me about the changes the project has brought about.

"We propagate laws to raise women's sense of law. We tell women to dial 110 when they think they cannot protect themselves. We would suggest abused women get medical certificates from the pioneering hospital chosen by the project. A detailed report will be guaranteed. The principle of dealing with domestic violence complaints is to listen to abused women and respect them. If they

want us to persuade their husbands, we mediate between them. If they decide to have a divorce, we can help them too. We tell them they can come to us at any time."

The practice of referring to the pioneering hospital is very recent. Madame Jing said,

"When abused women come to us, we normally ask whether their neighbourhood committees know their cases or not, if not, we phone the women's federation in their sub-district office and refer them to their local neighbourhood committees. The women's federation in sub-district office level has close working ties with the neighbourhood committee. Neighbourhood committees know more about family background of abused women, so it is better for staff there to mediate."

The Intervention and Prevention project has initiated a pioneering project in a street office in Beijing. In the pioneering area, the procedure works like this: abused women phone 110 (police emergency line) — 110 police stop the violence and write records — 110 police transfer records to local police stations — local police stations distribute records to police in charge of the specific area where abused women live — the police in charge of the area have responsibility to keep an eye on the family. Light bodily harm cases require them to keep records. Those that are not up to the standard will be dropped. The cooperation between relevant institutions in the pioneering project is still based on good relationships (*guan xi*). (*guan xi*, which is a very popular word in China, plays an important role in getting everything done rather than rules and guidelines.) There is not a clear guideline as to which institution is responsible for which part of the work. Lack of clear division of labour can result in repetition of work and prolonged process for abused women to end an unhappy marriage.

Conclusion

In this chapter, I have discussed the response of four institutions to domestic violence, namely the women's federation, the police, neighbourhood committee and work units. The actual practice today is that any of the listed institutions have the responsibility to help abused women. The institution women approach may provide help, but an effective network between them has yet to be established. To provide a better service to abused women, the role of each institution must be distinctive, and a network of cooperation between them must be set up.

At present, women's federations have been paying attention only to serious bodily harm cases. Ordinary domestic violence cases have not received enough attention. In order to provide better help to women, women's federations need to promote their work in this area. The services and attitudes of women's federations vary depending on individual cases.

The responsibility of the neighbourhood committee in curbing domestic violence should be written into guidelines and distributed to residents. The person in charge of this should be the mediator in a neighbourhood committee. This guideline cannot only provide better help to abused women at an early stage but also avoid great demand on police powers due to increasing reports of such cases.

The starting point for improving police work is to change the attitude of the police towards domestic violence so that the distinction between the private and the public spheres is limited to a minimum. By changing the attitude of the

police and their way of dealing with domestic violence cases, it will provide a positive impact on perpetrators so as to change their idea that they have the right to "discipline" their wives. The police must be encouraged to take active actions to punish perpetrators in accordance with laws on the demand of victims. A detailed guideline is required as to how this may be done more effectively. In serious bodily harm cases, the police should be granted the power to detain perpetrators without the permission of victims for further legal actions.

The intervention of work units is effective only for a short period of time. It is a necessary resource for women to seek help. However, as the control of work units of their staff is weakening and the turnover of the population is increasing, the function of work units in this field may become even less important.

Conclusion

This thesis has examined the impact of international human rights law on China with particular reference to the issue of domestic violence. It has done so by analysing the development of international conventions on women's human rights, especially through reviewing the process of how violence against women emerged from the private to the public domain in the international human rights discourse. All these developments have been set against the experience of women facing domestic violence in China, as revealed in my in-depth interviews with a group of 30 abused women and with representatives of a women's federation, a neighbourhood committee, and the police. This thesis has also traced the cultural background to the position of women in China and developments in Chinese policies towards women, and in Chinese Marriage Law, which has linked in various ways to the existence of domestic violence. The main findings of my study are as follows.

In Chapter 1, I reviewed the development of international human rights discourse and its relationship with women's rights; I focused especially on the manner in which the barrier between public and private violence against women has been broken. As a result, domestic violence, one form of violation of women's human rights, has recently been incorporated into the international human rights discourse within international jurisprudence. As I have argued, the UN is playing an increasingly important role in setting standards and supervising States Parties to implement its policies and conventions. However,

this chapter has also shown that international human rights law is gendered and male-centred, which results in the lack of reflection on women's real life experience in both its policy-based and treaty-based approaches. To be more specific, domestic violence which is a factual daily occurrence for women everywhere in the world, is still a newly addressed issue in the international human rights discourse. The Declaration on the Elimination of Violence Against Women, the only document addressing the violation of women's human rights in the home so far, is not legally binding, therefore it is not powerful enough to tackle the problem. More practical strategies need to be adopted, such as drafting conventions and establishing a special committee in charge of violence against women.

In addition, the implementation of UN conventions by States Parties is closely related to governmental development policies in each country. In Chapter 3, I have analysed the relationship between three Marriage Laws and the development goals of the Chinese government. While these Marriage Laws embodied the principle of UN conventions of equality between men and women, they mainly served the governmental development goals at the relevant time. This has greatly hindered the implementation of UN conventions.

In Chapter 4, I have analysed how China has implemented UN human rights conventions and policies by incorporating the principles of these instruments in its governmental policies and domestic laws. The Fourth World Conference on Women was the direct stimuli for the Chinese government to speed up its process of meeting international standards. FWCW highlighted the

issue of human rights of Chinese women. It had a great impact on the Chinese government and Chinese women in four major aspects, namely improvement of women's work in general; official recognition of the existence of domestic violence; two programs of development for Chinese women and the 2001 Marriage Law; and legal aid services for abused women.

The issue of domestic violence was brought into the public domain in China by the Fourth World Conference on Women. The FWCW pushed the Chinese government to recognise that violence against women is an infringement of women's human rights. The FWCW signified not only the start of the Chinese government's efforts to keep up with the international standards in protecting women's human rights, but also its endeavours to address violence against women (including domestic violence). The preparations for the Conference benefited women in five respects, namely increased research on gender issues, an emphasis on policies on women, training programs for women, publicity on women, and helping resources for women. The 1995 program, China's plan to implement Beijing Declaration and Platform for Action, placed stress on the supervision of law enforcement officials as well as raising of women's consciousness of the law. However, my fieldwork data analysis in Chapters 5, 6, 7 and 8 has illustrated the continuing need for the Chinese government to make significant improvements in relation to law enforcement officials neglecting their duties of helping abused women, and raising the consciousness of a majority of abused women to their entitlement to utilise state law to fight domestic violence. The implementation of the 1995

program has seen achievements in raising women's status in general as relevant government departments initiated their own policies and strategies to encourage women to participate in political, economic and educational activities, but the actual situation of women at the grass root level requires better improvement.

Further operational articles against domestic violence have been added to the 2001 Program. These have included perfecting relevant laws, strengthening implementation, enhancing women's sense of law, providing further legal services and legal aid to abused women, and most importantly stating the responsibilities of women's federations and workers unions for intervening in domestic violence cases.

The two governmental programs outlined above belong to a policy-based approach. In comparison, the 2001 Marriage Law has more specific enforcement powers for fighting domestic violence. As a response to the concluding comments by CEDAW to China's third and fourth periodic reports, as well as further implementing Beijing Declaration and Platform for Action, China put in 5 anti-domestic violence articles in the new Marriage Law. These articles empower abused women to end the abusive relationship, meanwhile requesting compensations from perpetrators. In addition, if the violence constitutes a crime, women are entitled to appeal for a public prosecution and the public security organ is required to investigate the case. This stipulation shows that domestic violence cases are now seen as equal to other serious crimes. Moreover, it is clearly stated that neighbourhood committees, work units, and the police have the duty to intervene in domestic violence cases. The

limitation of the 2001 Marriage Law lies in the following aspects. One is that it confines domestic violence within the context of family, which excludes quite a number of women from state protection. Another is that it tends to neglect mental and sexual violence. Compared with the standard of the UN, the 2001 Marriage Law is only the beginning of the anti-domestic violence effort of the Chinese government. Relevant articles are too general and lack enforcement power. In addition, there are no clear-cut guidelines as to particular duties of relevant organisations. My fieldwork data have illustrated the fact that relevant organisations tend to defer taking responsibilities. Domestic violence, as my data show, only becomes an issue worthy of official investigation where there is evidence of serious bodily harm. Hence, a specific anti-domestic violence law is in high demand and there is a long way to go before a fully effective mechanism is set up. The anti-domestic violence law shall cover several essential aspects, such as creating further cultural attitudinal changes in the society, improving enforcement mechanism, detailing guidelines for relevant institutions, and establishing an efficient co-operative network for the four main institutions, namely women's federations, work units, neighbourhood committees, and the police.

My fieldwork data have shown that after the 2001 Marriage Law took effect, there were some signs of improvement in that the relevant organisations were prepared to tackle domestic violence in some cases. The Chinese example illustrates that it is only when UN policies and conventions are converted into national laws and policies that they can be implemented by States Parties. Only

through this strategy can women benefit from the work of the UN, because "hitherto the impact of international law on the lives of individual men and women has not been direct or immediate; it has reached them only through the medium of the state of which they are members."¹

In Chapter 2, I have provided a historical review of women's position in the family and society. The chapter contends that in spite of the changes of different dynasties and governments, the phenomenon of domestic violence in China persists because patriarchy and women's inferior economic situation remains largely unchanged. Chinese society's tolerance and even encouragement of domestic violence, particularly where this concerns abused women and their natal families, has its roots in the long feudal cultural legacy, in patriarchy, and in the deep-rooted cultural legacy of wife-beating hands down from one generation to the next. As the data analysis in Chapters 6 and 7 has shown, women from violent family backgrounds tend to normalise the violence and stand it, while women from non-violent family backgrounds are more likely to view it as a violation of their rights. The acceptance of domestic violence is therefore closely linked with family background. Women from violent family backgrounds tend to tolerate violence because they consider the beating as normal, while men from a violent family background are more likely to be violent to their wives.

China's economic reform policy has had a contradictory impact on women. While the overall living standards of Chinese people has seen great

¹ Brierly, J. L. (1945) *The Outlook for International Law*, Oxford: Clarendon Press, p.4.

improvement, and some women have gained more economic and social status, yet others are suffering from a deteriorating status both at home and in society in general, especially in relation to their male counterparts. Furthermore, my data analyses in Chapter 6 have shown that the quickly accumulated wealth of the husband and the increasingly marginalised economic situation of the wife have brought about a new power imbalance in the family, which has contributed to an increase in domestic violence. Economic reform has caused a re-distribution of power and wealth in society as well as in the family. Until development policy is tempered with a gender perspective, it is likely to further victimise women. The link between rapid economic development and the increase of violence against women has special significance, because the Chinese example is applicable to other developing countries in Asia. The lesson that is drawn from China is that women can only benefit from an open economy, if the government adopts a gender-friendly development policy. In other words, the government should modify its economic policy so as to address the issue of the economic position of women in the reformed economy. Only in this way can women have a fair share of the fruits of economic reform. As has been shown in Chapter 6, major reasons for women to remain in an abusive relationship are largely related to their financial status, hence improving the financial situation of women is an effective way to prevent and reduce domestic violence caused by increasing inequality between men and women.

As Felstiner, Abel, and Sarat have pointed out in their research, there are several stages involved in disputes and dispute processing. Their theory better explains the stages abused women go through from naming, to blaming, and finally entering the stage of claiming. This explains not only the reason for women to stay in an abusive relationship for years, but also the various levels of understanding of their rights in the family which ranges from personalised and individual sense of rights to rights which require wider public concern. Only one-third of women in my sample define domestic violence as a human rights issue while two-thirds of them views it as a family matter. However, legal changes at domestic level reflecting international standard can develop women's sense of rights. The fieldwork data show that among some women there is an emerging sense of rights to demand the public interventions in protecting their human rights.

The 2001 Marriage Law is an attempt of the Chinese government to implement international human rights law. The missing link between the international and national human rights discourse and abused women is the need to create more effective institutional support. My fieldwork data demonstrate the fact that the problem is mainly centred on the attitude of the staff in these institutions, who continue to see domestic violence as a private family matter rather than as an infringement on women's rights. It is the Chinese government's responsibility to foster attitude change among them. Other measures needed to bridge the gap are the provisions of legal aid and legal consultation service to abused women. The majority of abused women

belong to a weak and isolated group in the society. Institutions related to women can play a key role in facilitating attitudinal change among abused women. The improved service of relevant institutions will tend to re-enforce women's emerging sense of rights and raise the overall sense of rights in society.

An attitude change in the social fabric is essential to the elimination of domestic violence in China. My field work data show that this problem is ideological and deep-rooted in the socially perpetuated belief among extended family members that domestic violence is a private family matter rather than an infringement on women's rights. Such an attitude not only reflects the marginalised position of women's rights at home in the international human rights discourse, but also mirrors the lenient attitude of the Chinese government towards this issue. A new ideology based on equality between men and women at home and the protection of human rights of individuals should be promoted so that domestic violence will be more widely seen as an infringement on women's human rights.

There are three determining elements for international laws to be effective in States Parties, namely converting international standards into national laws, providing adequate institutional support to translate women's claims to actual enforcement, and confronting the local culture of rights. It is in respect of the latter two that the Chinese government must focus its attention and develop an adequate framework for action.

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